



## ***CITY COUNCIL STAFF REPORT***

***MEETING DATE: October 16, 2002***

**Agenda Item # 2**

**Prepared By:**

**City Attorney**

**Submitted By:**

**City Manager**

### **AMENDMENT TO SUBDIVISION IMPROVEMENT AGREEMENT - ALCINI PARTNERSHIP**

#### **RECOMMENDED ACTION:**

Approve Amendment to Subdivision Improvement Agreement.

#### **EXECUTIVE SUMMARY:**

In February 2001, the Alcini Partnership entered into a subdivision improvement agreement with the City regarding certain public improvements to be constructed on their property on Mast Street. The agreement provided that the improvements must be completed within eighteen (18) months from the date of the agreement.

Municipal Code section 17.32.260 provides that subdivision improvements must be completed by a developer within eighteen months, or within twenty-four months as approved by the city engineer. However, the Code also provides that the City Council may extend this deadline in their discretion. The Agreement entered into with the Alcini Partnership provides that the improvements must be completed within eighteen months, with two six-month extensions available if approved by the City Manager.

The Alcini Partnership sold three acres of the subdivision to a development corporation which anticipated that a meat facility would locate there. The facility has determined not to locate operations at the site, and as a result the Alcini Partnership would like an extension of the agreement until a new purchaser is located and commences construction. (See attached letter from the Alcinis.) The City Manager has granted one extension, until January 14, 2003. The developers are requesting an extension until March 14, 2004, with the City Manager to have the ability to grant two six-month extensions from that date. (See attached letter from the Alcinis dated September 3, 2002.)

Staff does not believe that the improvements need to be installed until the property develops. For that reason, staff recommends that the Council extend the Agreement as provided in the attached Amendment. However, staff believes that the March 2004 date should be sufficient to complete a sale and improvements, and does not recommend that the City Manager have the discretion to extend beyond that date.

#### **FISCAL IMPACT:**

No budget adjustment required.

RECORDING REQUESTED BY  
WHEN RECORDED RETURN TO

CITY OF MORGAN HILL  
17555 PEAK AVENUE  
MORGAN HILL, CA 95037

(RECORD AT NO FEE PURSUANT TO GOVERNMENT  
CODE SECTION 27383)

THE AREA ABOVE IS RESERVED FOR RECORDER'S USE

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**AMENDMENT TO  
SUBDIVISION IMPROVEMENT AGREEMENT**

(SUBDIVIDER - ALCINI PARTNERSHIP)

THIS AGREEMENT is made on this \_\_\_\_ day of \_\_\_\_\_, 2002, by the CITY OF MORGAN HILL, a municipal corporation ("CITY"), and the Alcini Partnership, a California General Partnership ("SUBDIVIDER").

**RECITALS**

The following recitals are a substantive part of this Agreement:

1. This Agreement is entered into pursuant to the approval given by the City Council of the City of Morgan Hill on October 16, 2002.
2. This Agreement is entered into pursuant to the authority granted by Municipal Code Section 17.32.260.
3. SUBDIVIDER and CITY desire to amend the Subdivision Improvement Agreement dated February 14, 2002, attached as Exhibit A to this Amendment and incorporated herein as if set forth in full.

**AGREEMENT**

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Term and Conditions of Original Agreement.** All terms and conditions contained in Exhibit A are to remain in full force and effect with the sole exception of Paragraphs 1 and 5 as set forth in Paragraphs 2 and 3 below, respectively.

2. **Amendment to Paragraph 1 of Original Agreement.** Paragraph 1 of the Original Agreement is hereby modified to read:

“This Agreement shall expire on March 14, 2004. Work shall be completed and accepted by the City Council prior to said expiration date.”

3. **Amendment to Paragraph 5 of Original Agreement.** Paragraph 5 of the Original Agreement is hereby modified to read:

**“Improvements: Time Limits.** SUBDIVIDER agrees to cause all improvements to be made and constructed in the Subdivision and to comply with all requirements of the Subdivision Map Act, according to the improvement plans for the Subdivision approved by the City Engineer and including any changes or alteration in the work ("the Work") required by the City Engineer. The Work shall be completed utilizing CITY standards and specifications. SUBDIVIDER agrees to complete the Work on or before March 14, 2002. In the event that SUBDIVIDER shall fail to complete the Work within the time provided by this Agreement, CITY may in its sole discretion and in addition to any other remedy provided in this Agreement or by law, enter upon the Subdivision and complete the Work and recover the full cost and expense of construction from SUBDIVIDER, SUBDIVIDER'S successors and assigns, Subdivider's Performance/Labor & Material Bonds associated with this subdivision, or from the then owner of the Subdivision and/or place a lien upon the Subdivision for the cost and expense. Any and all City costs shall include administrative and attorney costs.”

**IN WITNESS THEREOF,** these parties have executed this Agreement on the day and year shown below.

**CITY OF MORGAN HILL**

**ALCINI PARTNERSHIP**

By: \_\_\_\_\_  
J. Edward Tewes, City Manager

By: \_\_\_\_\_  
Print Name:

Date: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Jack Dilles, Risk Manager  
Date: \_\_\_\_\_

**ATTEST:**

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Irma Torrez, City Clerk  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Helene Leichter, City Attorney  
Date: \_\_\_\_\_



## ***CITY COUNCIL STAFF REPORT***

***MEETING DATE: October 16, 2002***

**Agenda Item # 3**

**Prepared By:**

**City Attorney**

**Submitted By:**

**City Manager**

### **AGREEMENT WITH THE STROMBOTNE LAW FIRM**

#### **RECOMMENDED ACTIONS:**

Authorize the City Manager to execute the attached Consultant Agreement with the Strombotne Law Firm.

#### **EXECUTIVE SUMMARY:**

The City contracted with the Strombotne Law Firm to assist the City with its defense in the lawsuit filed by James and Linda Allivato. The attached Consultant Agreement is in the amount of \$75,000. It is anticipated that this amount will be sufficient to cover fees and costs associated with the initial stages of the Allivato lawsuit. Therefore, staff is recommending that Council approve the attached Consultant Agreement in the amount of \$75,000.

**FISCAL IMPACT:** The cost of this agreement can be accommodated in the City Attorney's Office budget. No additional appropriation is necessary at this time.



**CITY COUNCIL STAFF REPORT**  
**MEETING DATE: OCTOBER 16, 2002**

**APPROPRIATION OF FUNDS FOR BUTTERFIELD  
BOULEVARD SEWER TRUNK, BETWEEN MAIN AVENUE  
AND SAN PEDRO AVENUE**

**RECOMMENDED ACTION(S):**

1. Appropriate \$530,000 from the unappropriated sewer impact fee fund (641) to construct the Butterfield sewer trunk, between Main and San Pedro Avenues.
2. Direct staff to prepare plans and specifications for public bidding.

**EXECUTIVE SUMMARY:** The City has received TFCA Grant Funds in the amount of \$460,000 to construct the Butterfield Linear Park and the deadline to secure the funds through Caltrans is September 2003. The construction of the Butterfield sewer trunk needs to be installed sooner than anticipated in our Sewer Master Plan since the trunk sewer is located directly beneath the Linear Park. With the recommended action, staff plans to accomplish this early, and hopes to have the Linear Park constructed by the middle of October, 2003.

The Sewer Master Plan calls for construction of a sewer trunk line along Butterfield Boulevard to parallel the Railroad-Monterey trunk during fiscal year 2003-2004. The intent of the trunk is to divert flow off the already strained Railroad-Monterey trunk, thereby providing increased capacity for future development within the City. The sewer trunk is currently partially installed along Butterfield, between Cochrane Road and Central Avenue.

During the construction of Butterfield Boulevard, phases I and II, a sewer trunk was preliminary designed and portions of the sewer trunk were installed. The portions that were installed are located at all of the street intersections along Butterfield. This was done to make the remaining sewer trunk portions easier to install in the future. The construction of the remaining trunk was designed not to damage any existing pavement during the installation.

The scope of work for the project shall include installing approximately 3,100 linear feet of PVC sewer pipe, between the drainage channel and Butterfield Boulevard, from Main Street to San Pedro Avenue. Staff plans to hire a Geotechnical consultant to perform the soils investigation work due to the depth. Civil design and Geotechnical work is estimated to cost \$59,200 and construction is estimated to cost \$470,800, including the 10% construction contingency. Upon approval, Staff will prepare environmental documents, plans and specifications and provide construction support. Construction is scheduled to begin in April 2003 and be complete a few months later.

**FISCAL IMPACT:** The construction of the Butterfield trunk is presently not budgeted. Staff recommends that the funding come from our unappropriated Sewer Impact Fee Funds (641). A budget adjustment sheet is attached.

**Agenda Item # 4**

**Prepared By:**

**Associate Engineer**

**Approved By:**

**Public Works Director**

**Submitted By:**

**City Manager**



***CITY COUNCIL STAFF REPORT***  
***MEETING DATE: OCTOBER 16, 2002***

**AMEND PROFESSIONAL SERVICES CONTRACT FOR  
TRAFFIC SIGNAL DESIGN AT THE TENNANT AVENUE  
NORTHBOUND 101 OFF-RAMP INTERSECTION**

**RECOMMENDED ACTION(S):**

Authorize the City Manager to execute an amendment to the existing professional services agreement with Higgins Associates for traffic signal design services for the Tennant Avenue Northbound 101 off-ramp intersection in the amount of \$7,266. The total amended professional services agreement shall not exceed \$42,266.

**EXECUTIVE SUMMARY:** On July 11, 2001, Council awarded a professional service agreement to Higgins Associates to design a traffic signal at the Tennant Avenue Northbound 101 off-ramp intersection for an amount not to exceed \$35,000.

During the design process, it was necessary to authorize an increase in services with Higgins Associates to facilitate the completion of the project. The additional tasks were performed as requested by the City in an effort to expedite the lengthy approval process required by Caltrans.

The increased scope of services included; additional signing and striping, several phasing diagrams, resubmittals, additional PG&E coordination, and the design of an additional luminaire and storm overdrain system per Caltrans request. The additional work totaled \$7,266. The project is currently out to bid and construction is estimated to start in November and be completed in 85 working days.

**FISCAL IMPACT:** The total cost for the Higgins Associates contract as amended is \$42,266. Funds are budgeted and available for fiscal year 2002-2003. The funding is from two funds; 68% (or \$4,941) from Traffic Impact Fund No. 309-86200-8053-502H01 and 32% (or \$2,325) from RDA No. 317-86200-8055-502H01.

**Agenda Item # 5**

**Prepared By:**

**Associate Engineer**

**Approved By:**

**Public Works Director**

**Submitted By:**

**City Manager**



## **CITY COUNCIL MEETING STAFF REPORT**

**MEETING DATE: OCTOBER 16, 2002**

**TITLE: FINAL MAP ACCEPTANCE FOR MISSION RANCH PH.V  
(TRACT 9423)**

### **RECOMMENDED ACTION(S):**

- 1) Approve the final map, subdivision agreement and improvement plans
- 2) Authorize the City Manager to sign the Subdivision Improvement Agreement on behalf of the City
- 3) Authorize the recordation of the map and the Subdivision Improvement Agreement following recordation of the Development Improvement Agreement

**EXECUTIVE SUMMARY:** Tract 9423 is a 15 lot subdivision on the southeast corner of the Cochrane Road and Peet Road intersection (see attached diagram). The developer has completed all the conditions specified by the Planning Commission in the approval of the Tentative Map on June 11, 2002.

The developer has furnished the City with the necessary documents to complete the processing of the Final Map and has made provision with a Title Company to provide the City with the required fees, insurance and bonds prior to recordation of the Final Map.

**FISCAL IMPACT:** Development review for this project is from development processing fees.

**Agenda Item # 6**

**Prepared By:**

**Senior Engineer**

**Approved By:**

**Public Works Director**

**Submitted By:**

**City Manager**



**CITY COUNCIL STAFF REPORT**  
**MEETING DATE: OCTOBER 16, 2002**

**APPROVE DISADVANTAGED BUSINESS ENTERPRISE  
(DBE) PROGRAM AND ANNUAL GOAL**

**RECOMMENDED ACTION(S):**

1. Approve the City's Disadvantaged Business Enterprise (DBE) Program and Annual overall DBE goal of 6.7% for the Federal Fiscal Year 2002/2003, beginning on October 1, 2002 and ending on September 30, 2003.
2. Authorize the City Manager, by adoption of this Council Report, to sign the Final DBE Program and submit it to Caltrans on behalf of the City.

**EXECUTIVE SUMMARY:** The City of Morgan Hill has established a DBE program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. The City of Morgan Hill has and will continue to receive Federal financial assistance from the DOT, and as a condition of receiving this assistance the City of Morgan Hill must assure compliance with 49 CFR Part 26.

Title 49 of the Code of Federal Regulations Part 26, and as described in Caltrans' *Local Assistance Procedures Manual*, establishes policies that the City used to set an overall DBE goal of 6.7%. To establish the base figure, the City of Morgan Hill has elected to utilize the Caltrans DBE Directory of certified firms per work category and NAICS codes, filtered to represent only DBE firms within the City of Morgan Hill's relevant market area. The County Census Bureau Data, within the same geographical market area was used to calculate the total number of businesses for the same work category and NAICS codes. For a detailed description of the methodology, see the DBE Program.

The City of Morgan Hill published a Public Notice in the Morgan Hill Times and the Nuevo Mundo (Spanish language) newspapers announcing the City of Morgan Hill's proposed overall annual goals for the FY 2002-2003 contracts assisted by Fair Practices Act. Such Notice informed the public that the proposed goals and their rationale were available for inspection at the City of Morgan Hill during normal business hours for 30 days following the date of the Public Notice (September 26, 2002). Also, the notice informed the public that the City of Morgan Hill and FHWA accepted comments on the goals for 45 days from the date of the Public Notice (until October 11, 2002). No comments were received during the review periods.

**FISCAL IMPACT:** None.

**Agenda Item # 7**

**Prepared By:**

**Associate Engineer**

**Approved By:**

**Public Works Director**

**Submitted By:**

**City Manager**





## ***CITY COUNCIL STAFF REPORT***

***MEETING DATE: October 16, 2002***

### **AMEND PROFESSIONAL SERVICES CONTRACT WITH KORVE ENGINEERING FOR TECHNICAL SUPPORT FOR FUTURE MADRONE PARKWAY RAIL CROSSING**

#### **RECOMMENDED ACTION:**

Authorize the City Manager to execute an amendment to the existing professional services agreement with Korve Engineering for technical support for the future Madrone Parkway Rail Crossing, in an amount not to exceed \$16,000.

#### **EXECUTIVE SUMMARY:**

The construction of Madrone Parkway over the Union Pacific railroad tracks will require approval from the California Public Utilities Commission (CPUC). Gaining approval for this rail crossing will be a difficult task due to the CPUC's policy of reducing the number of at-grade crossings throughout California. On July 17, 2002 the City Manager executed a professional services contract agreement with Korve Engineering at a not-to-exceed fee of \$18,000 for providing technical support to staff in preparing an application for the crossing to the CPUC. Korve Engineering specializes in rail safety engineering and has extensive experience in negotiating on behalf of local agencies for rail crossing issues. Korve was recommended to staff for their ability to effectively communicate and facilitate dialogue with the major rail entities: CPUC, Union Pacific Railroad, Caltrain, and Amtrak. Under the terms of the original agreement, Korve Engineering was asked to contact key officials of the major rail entities, determine the critical issues, and provide the necessary research and technical direction for staff to prepare the formal application to the CPUC for the Madrone Parkway crossing.

The application has now been submitted to the CPUC and the approval process moves into the next phase. It will be necessary to give a formal presentation to the CPUC and the other major rail entities explaining the City's proposed project and why they should support it. Korve will conduct the necessary field work, design, and research for the presentation, prepare the presentation, and deliver it to the affected parties. Korve will then be responsible for following up on key issues and addressing the concerns of the major rail entities. They will continue to facilitate dialogue with rail officials and coordinate any meetings required between them and City staff. Staff recommends amending the existing contract agreement with Korve Engineering per the attached proposal at a not-to-exceed fee of \$16,000 to maximize the City's chances of obtaining approval for the at-grade rail crossing at Madrone Parkway.

#### ***FISCAL IMPACT:***

The total cost of the amended contract with Korve Engineering is \$34,000. Funds are budgeted in the current fiscal year in CIP project number 501C02.

**Agenda Item # 8**

**Prepared By:**

**Deputy Director of PW**

**Approved By:**

**Public Works Director**

**Submitted By:**

**City Manager**



## **CITY COUNCIL MEETING STAFF REPORT**

**MEETING DATE: OCTOBER 16, 2002**

**TITLE: FINAL MAP ACCEPTANCE FOR COYOTE ESTATES  
PHASE VI (TRACT 9400)**

### **RECOMMENDED ACTION(S):**

- 1) Approve the final map, subdivision agreement and improvement plans
- 2) Authorize the City Manager to sign the Subdivision Improvement Agreement on behalf of the City
- 3) Authorize the recordation of the map and the Subdivision Improvement Agreement following recordation of the Development Improvement Agreement

**EXECUTIVE SUMMARY:** Tract 9400 is a 17 lot subdivision located on the north side of Cochrane Road within the Coyote Estates development (see attached diagram). The developer has completed all the conditions specified by the Planning Commission in the approval of the Tentative Map on June 11, 2002.

The developer has furnished the City with the necessary documents to complete the processing of the Final Map and has made provision with a Title Company for the recordation of the Final Map.

**FISCAL IMPACT:** Development review for this project is from development processing fees.

**Agenda Item # 9**

**Prepared By:**

**Senior Engineer**

**Approved By:**

**Public Works Director**

**Submitted By:**

**City Manager**



## ***CITY COUNCIL STAFF REPORT***

***MEETING DATE: October 16, 2002***

### **COMMUNITY AND CULTURAL CENTER PROJECT SEPTEMBER CONSTRUCTION PROGRESS REPORT**

**RECOMMENDED ACTION(S):** *Information only.*

**EXECUTIVE SUMMARY:** Previous Council action awarded the contract for construction of the Community Center Project to DPR Construction, Inc. At that time, staff informed Council that we would report monthly on the progress of the construction. The progress report for the month of September is attached. This report has been sent to our webmaster for posting on the City's website. The project remains approximately seven weeks behind schedule due to the various delays as previously discussed; however, with the recent increase in DPR's subcontractor production, staff is becoming more confident that the project can be completed by the end of November, barring any unforeseen problems (i.e. delays in deliveries or early inclement weather). It is anticipated that the additional funding as appropriated should be sufficient to complete the project, also barring any unforeseen problems. We are currently in the process of ordering the furnishings for the building based on Council's approval of the purchase order to OPI (Office Products & Interiors). We will begin receiving those furnishings starting in mid- November.

**FISCAL IMPACT:** None at this time.

**Agenda Item # 10**

**Prepared By:**

**Project Manager**

**Approved By:**

**Public Works Director**

**Submitted By:**

**City Manager**



## ***CITY COUNCIL STAFF REPORT***

***MEETING DATE: October 16, 2002***

### **SUBDIVISION APPLICATION SD 02-05: SUNNYSIDE- QUAIL CREEK**

**RECOMMENDED ACTION(S):** Take no action, thereby concurring with the Planning Commission's decision regarding approval of the subdivision map.

**Agenda Item # 11**

**Prepared By:**

**Senior Planner**

**Approved By:**

**Community  
Development Director**

**Submitted By:**

**City Manager**

#### **EXECUTIVE SUMMARY:**

A request to subdivide a 2.36-acre portion of 15.7-acre parcel to allow for the construction of 12 units which will represent phase 1B of the Quail Creek project located on the northeast corner of the intersection of Watsonville Rd. and Sunnyside.

Phase 1A (20 units) of the project is currently under construction on the south side of the site, taking access from Watsonville Rd. Phase 1B will be the addition of 12 lots forming a cul-de-sac within the project.

On March 6, 2002, the City Council approved an RPD plan for the 15.7 acre Quail Creek project. The subdivision map as submitted is in compliance with the RPD plan approved by the City Council in March. The lot sizes and locations are each per the approved RPD.

Section 17.20.110 of the Subdivision Ordinance provides for City Council review of tentative maps which have been approved by the Planning Commission. The Council may schedule a hearing to reconsider the Commission action, or by taking no action, let the Commission's action of approval stand.

This application was reviewed by the Planning Commission at its September 10, 2002, meeting. The Commission voted 7-0, approving the request. The Planning Commission resolution, conditions of approval and subdivision map are attached. The staff report and minutes for the subdivision are attached to the development agreement request within this same agenda.

**FISCAL IMPACT:** None. Filing fees were paid to the City to cover the cost of processing this application.



## ***CITY COUNCIL STAFF REPORT***

***MEETING DATE: October 16, 2002***

### **SUBDIVISION APPLICATION SD 02-05: SUNNYSIDE- QUAIL CREEK**

**RECOMMENDED ACTION(S):** Take no action, thereby concurring with the Planning Commission's decision regarding approval of the subdivision map.

**Agenda Item # 11**

**Prepared By:**

**Senior Planner**

**Approved By:**

**Community  
Development Director**

**Submitted By:**

**City Manager**

#### **EXECUTIVE SUMMARY:**

A request to subdivide a 2.36-acre portion of 15.7-acre parcel to allow for the construction of 12 units which will represent phase 1B of the Quail Creek project located on the northeast corner of the intersection of Watsonville Rd. and Sunnyside.

Phase 1A (20 units) of the project is currently under construction on the south side of the site, taking access from Watsonville Rd. Phase 1B will be the addition of 12 lots forming a cul-de-sac within the project.

On March 6, 2002, the City Council approved an RPD plan for the 15.7 acre Quail Creek project. The subdivision map as submitted is in compliance with the RPD plan approved by the City Council in March. The lot sizes and locations are each per the approved RPD.

Section 17.20.110 of the Subdivision Ordinance provides for City Council review of tentative maps which have been approved by the Planning Commission. The Council may schedule a hearing to reconsider the Commission action, or by taking no action, let the Commission's action of approval stand.

This application was reviewed by the Planning Commission at its September 10, 2002, meeting. The Commission voted 7-0, approving the request. The Planning Commission resolution, conditions of approval and subdivision map are attached. The staff report and minutes for the subdivision are attached to the development agreement request within this same agenda.

**FISCAL IMPACT:** None. Filing fees were paid to the City to cover the cost of processing this application.



## ***CITY COUNCIL STAFF REPORT***

***MEETING DATE: October 16, 2002***

**Agenda Item # 12**

**Prepared By:**

**Council Services &  
Records Manager**

**Submitted By:**

**City Manager**

### **MEETING START TIMES FOR CITY COUNCIL, REDEVELOPMENT AGENCY AND FINANCE & AUDIT COMMITTEE**

#### **RECOMMENDED ACTION:**

**Direct** the City Clerk to amend Council Policy 97-01, Section 5.1. D and E as recommended by Mayor Kennedy.

#### **EXECUTIVE SUMMARY:**

Mayor Kennedy has requested that the Council give consideration to meeting start times for the Finance and Audit Committee and closed sessions.

Finance and Audit Committee members have indicated that meeting from 6:00-6:30 p.m. on the third Wednesdays of the month does not afford enough time to conduct review and discussion of City finances. The Finance and Audit Committee has either had to start its meetings at 5:30 p.m. or move the meeting to another day.

Mayor Kennedy indicates that meeting in closed session from 6:30-7:00 p.m. does not afford the Council adequate time to discuss closed session items. In order to afford the Finance and Audit Committee adequate meeting time and to give the Council additional time to meet in closed session, Mayor Kennedy is requesting that the Council give consideration to adjusting its meeting schedule as follows:

First and Third Wednesdays of the month: Closed sessions to take place from 6:00-7:00 p.m., followed by the regular City Council business session at 7:00 p.m.

Fourth Wednesday of the month: Finance & Audit Committee to meet from 6:00-7:00 p.m., followed by the regular Redevelopment Agency meeting at 7:00 p.m. Closed sessions to be scheduled at the end of the agenda. This adjustment seems to fit the schedule of Finance & Audit Committee members.

Section 5, Order of Business, of adopted Council Policy 97-01 is attached and has been amended to facilitate the above schedule for City Council and Redevelopment Agency meetings. Should the Council concur with Mayor Kennedy's recommended meeting schedule, a motion to approve amended Section 5.1 of Policy 97-01 would be in order. The amended policy would become effective with the November 2002 meetings.

**FISCAL IMPACT:** The time necessary to prepare this staff report is accommodated in the Council Services & Records Manager's operating budget.



## ***CITY COUNCIL STAFF REPORT***

***MEETING DATE: October 16, 2002***

### **REQUEST FROM THE MORGAN HILL COMMUNITY HEALTH FOUNDATION (MHCHF) FOR THE APPROVAL OF THE MORGAN HILL COMMUNITY ADVISORY BOARD (MHCAB) OF SAINT LOUISE REGIONAL HOSPITAL**

**RECOMMENDED ACTION:** Approval of MHCHF's Request For the Establishment of the MHCAB of Saint Louise Regional Hospital

#### **EXECUTIVE SUMMARY:**

Please find attached a letter from Bill Brown, President of the Morgan Hill Community Health Foundation, requesting Council approval of the Morgan Hill Community Advisory Board (MHCAB) as a committee of the Saint Louise Regional Hospital Board of Directors. Purposes, duties and the membership selection process of the MHCAB are described in the resolution of the Board of Directors. Said resolution is attached for Council reference as well as the Agreement dated June 6, 2002 between the City of Morgan Hill and Saint Louise Regional Hospital referenced in Mr. Brown's letter.

It is being recommended that the Council approve MHCHF's request.

**FISCAL IMPACT:** None.

**Agenda Item # 13**

**Prepared/Approved By:**

**Council Services and Records Manager**

**Submitted By:**

**City Manager**

**AGENDA ITEM # 14**  
**Submitted for Approval: October 16, 2002**

**CITY OF MORGAN HILL  
SPECIAL CITY COUNCIL MEETING WITH  
GRAND OPENING COMMITTEE  
MINUTES SEPTEMBER 12, 2002**

**MEETING CANCELLED**

This meeting was cancelled due to the lack of a City Council quorum. The Community and Cultural Center Grand Opening Committees met and presented updates.

**MINUTES PREPARED BY:**

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**IRMA TORREZ, City Clerk**



**AGENDA ITEM # 15**  
**Submitted for Approval: October 16, 2002**

**CITY OF MORGAN HILL  
SPECIAL CITY COUNCIL MEETING WITH  
GRAND OPENING COMMITTEE  
MINUTES - SEPTEMBER 13, 2002**

**MEETING CANCELLED**

The special meeting with Assemblyman Simon Salinas was cancelled due to the lack of a City Council quorum.

**MINUTES PREPARED BY:**

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**IRMA TORREZ, City Clerk**

**CITY OF MORGAN HILL  
SPECIAL CITY COUNCIL MEETING WITH  
ARCHITECTURAL & SITE REVIEW BOARD;  
BICYCLE & TRAILS ADVISORY COMMITTEE; LIBRARY COMMISSION;  
CORPORATION YARD COMMISSION; PERSONNEL COMMISSION;  
PARKS & RECREATION COMMISSION; PLANNING COMMISSION;  
SENIOR ADVISORY COMMITTEE AND YOUTH ADVISORY COMMITTEE  
MINUTES - SEPTEMBER 21, 2002**

**CALL TO ORDER**

Mayor Kennedy called the meeting to order at 9:05 a.m.

**ROLL CALL ATTENDANCE**

**City Council**

Present: Council Members Carr, Chang, Sellers, Tate; and Mayor Kennedy

**Bicycle & Trails Advisory Committee**

Present: None

Absent: Committee Members: Eltgroth, Bardner, Hubbell, Kinkade and Rothert

**Mobile Home Rent Commission**

Present: Commissioners: Dillmann, Graham, and Moore

Absent: Commissioner Liegl

**Library Commission**

Present: Commissioners: Boyne, Dillmann, Stanaway

Absent: Commissioners: Anderson, Cameron, Gregg, Keeshen, Nale, Salzano

**Corporation Yard Commission**

Present: Commissioner Knopf and Council Members Chang and Sellers

Absent: School Board Members Foster and Panos

**Personnel Commission**

Present: None

Absent: Commissioners: Gentile and McMahon

**Parks & Recreation Commissioners**

Present: Commissioners: Hagiperos, Kennedy, Librers

Absent: Commissioners: Frederick, Page, Rolley, van Keulen and School Board Member Kennett (ex-officio member)

**Planning Commission**

Present: Commissioners: Benich, Escobar, Lyle, Mueller  
Absent: Acevedo, Engles, Weston

**Senior Advisory Committee**

Present: None  
Absent: Committee Members: Bateman, Bautista, Gadway, Harkness, Keig, Metcalf, Mort

**Youth Advisory Committee**

Present: Committee Members: England, Lewis, Singh, Van Keulen, Vu, Shapiro  
Absent: Committee Members: Bach, Chang, O'Mahen, Tainter

**DECLARATION OF POSTING OF AGENDA**

City Clerk Torrez certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2

**WORKSHOP**

**1. SPECIAL JOINT WORKSHOP OF THE CITY COUNCIL AND CITY OF MORGAN HILL BOARDS, COMMISSION AND COMMITTEES**

The City Council hosted a workshop with Morgan Hill boards, commissioners and committees.

City Manager Tewes presented a General City Update. The City Council presented policy initiatives for the coming year. City Attorney Leichter and City Clerk Torrez addressed the Brown Act and Fair Political Practices Commission issues. Henry Gardner, Managing Partner, Gardner, Underwood & Bacon, made a presentation on "Effective Boards and Commissions."

The following questions/issues were raised:

Commissioner Benich recommended that the City encourage a "public arts program."

Commissioner Lyle addressed recruitment of doctors and the need for medical facilities; resources needed in terms of adequate police and fire response time. Housing stock getting older without adequate fire response. Noted that no action has been taken regarding the construction of a third fire station.

Council Member Tate indicated that the City's Fire Master Plan recommends a third fire station be constructed, but to be sited in the downtown area. He stated that it would be a big commitment to Morgan Hill when the third fire station is built.

City Manager Tewes indicated that funding is being set aside for the day that the City needs to implement the third fire station. He said that the Fire Master Plan does not state that the fire station is needed at this time.

Mayor Kennedy stated that the City needs to evaluate funding availability as it will be needed to help pay for the third fire station's operating costs.

Commissioner Dillmann felt that fire services in Morgan Hill were as good as anywhere else in the County.

Commissioner Mueller stated that approximately 70% of all emergency calls are for medical responses versus fire responses, noting that these were two different types of responses.

City Manager Tewes indicated that the Fire Master Plan calls for a third fire station to be built centrally, east of the railroad tracks. He said that the City is currently looking for a site.

Committee Member England indicated that the City attempted to address Youth Empowered for Success (YES) by establishing the Youth Advisory Committee (YAC). He did not see these two working together. He inquired when the relationship with youth would be improved?

Council Member Tate stated that a YAC representative serves on YES. He said that YES has spent the past year on a fact finding mission, focusing on the feelings of youth. He indicated that YES builds and encourages youth involvement.

Committee Member England informed the City Council that seniors at Live Oak High School are attending YAC meetings. However, he sees few YES members attending YAC meetings. He inquired why attendance at meetings cannot be a two-way effort?

Council Member Tate responded that individuals' availability is difficult to coordinate. He indicated that he has a goal of attending a number of YAC meetings this year and try to have greater interaction with YAC members.

City Manager Tewes said that the City needs to find ways to involve youth in the decision making process.

Board Member Fruit suggested that the City have youth members be part of every board, commission and committee.

Commissioner Moore indicated that most of the individuals in attendance participated in the General Plan Update. As part of this update, there was discussion on how fast growth would occur. He indicated that Measure P would sunset in 2010 and noted that a Measure P Committee has been established and are in the process of reviewing possible changes to Measure P. He said that the General Plan Update Committee discussed a recommended population growth. He recommended that the Measure P Committee use the information that was derived by the General Plan Update Committee and not reinvent the wheel.

Council Member Tate stated that no one is suggesting that the General Plan Update Committee population recommendation would be discarded.

Council Member Sellers acknowledged that the current Measure P would be coming to an end. He felt that Measure P was a great measure approved by the voters in Morgan Hill but that it is not perfect. He felt that it was important to determine how the City will grow and where. He felt that it was important for the City to do a better job focusing on development in appropriate areas for residential, commercial and industrial development.

Commissioner Graham addressed a high speed rail EIR and recommended that State EIR grants be sought, making a stop in Morgan Hill or south county.

Mayor Kennedy stated that he has heard that a high speed rail station could be located in Gilroy but that there is not much of a chance for a high speed rail station being located in Morgan Hill.

Commissioner Graham inquired if it would be possible to place a station central to Morgan Hill and Gilroy.

Commissioner Graham recommended that the City tap funds for a downtown analysis.

City Manager Tewes stated that there is a linkage between transportation and housing. He indicated that the Downtown Plan Committee is looking at this issue.

Commissioner Mueller inquired how the City is doing in getting a Madrone at grade crossing installed along the railroad tracks?

Deputy Public Works Director Bjarke responded that the City has submitted an application for an at grade crossings and that it can take up to 18 months to process the application. He stated that correcting unsafe railroad crossings is important to the City.

Commissioner Mueller stated that an 18-month application process could stall the Catholic High School project.

Mayor Kennedy indicated that City staff is working with the Public Utilities Commission, the railroad and the Catholic High School in order to understand the service problems.

Commissioner Dillmann addressed the following: 1) affordable housing as a driver in that it encourages industry to locate in Morgan Hill; 2) City needs more trains/train stops versus high speed rail; 3) City has been fighting Calpine project, noting that power is needed; and 4) traffic/traffic lights in Morgan Hill are an issue. The completion of Butterfield Boulevard is important to help the traffic situation.

Mayor Pro Tempore Carr noted that Measure P states that there are requirements relating to affordable housing. The Housing Element Task Force recommends that moderate income/affordable housing be constructed and that diversity of home ownership is important.

Commissioner Mueller said that in the review of the Measure P scoring criteria, a set of points are

being recommended in order to encourage market rate and moderate housing units.

Bob Benich inquired whether the City has considered the construction of affordable housing such as the Woodland Mobile Home Park that is owner occupied?

Mayor Kennedy did not believe that a private developer would not want to pursue a Woodland Mobile Home Park type project. However, this type of project could be built using City/RDA funds.

Council Member Sellers addressed the Calpine issue, noting that the City has filed a lawsuit against Calpine. He felt that air pollution and other impacts need to be identified and addressed. If air quality is not regulated before Calpine is built, the City would have lost the opportunity to monitor air pollution. Once this issue is resolved, he said that the City would work with Calpine.

City Manager Tewes noted that in 15 years, traffic will be the same as is being experienced today with the completion of Butterfield Boulevard and Highway 101 expansion.

Committee Member Lewis noted that the recreation center proposed to be located on Edmundson Avenue is not centrally located. He recommended that City staff work with VTA to extend bus service to Edmundson Avenue.

Commissioner Graham recommended that key issues of the City be forwarded to our legislative representatives.

Council Member Sellers stated that the Council meets twice a year with legislative representatives to address specific issues. He indicated that the City's Legislative Committee, consisting of two council members and staff, stay on top of legislative issues and that legislative issues could be broadened.

Commissioner Mueller expressed concern with the City's general fund and how it will move forward. He felt that it was important for the general fund to grow.

Mayor Kennedy said that focus is being given toward economic development to enhance the general fund. He said that there are other options to enhance the general fund such as assessments or taxes.

City Manager Tewes identified new services of general fund revenues such as federal, state, local or self taxes. He indicated that Morgan Hill is low tax and debt free. The question is whether the community wants to expand services and tax itself for said services.

Commissioner Graham recommended that the City seek grants such as clean air and library grants.

Council Member Sellers stated that the City has retained the services of a consultant to assist the City in finding available grants. He indicated that the City has a general plan surplus that has not been squandered. He felt that the surplus would help keep the City safe and allow for expansion with some caution.

**ADJOURNMENT**

There being no further business, Mayor Kennedy adjourned the meeting at 1:08 p.m.

**MINUTES PREPARED BY:**

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**IRMA TORREZ, City Clerk**

**CITY OF MORGAN HILL  
SPECIAL CITY COUNCIL MEETING  
MINUTES SEPTEMBER 25, 2002**

**CALL TO ORDER**

Mayor Kennedy called the special meeting to order at 6:15 p.m.

**ROLL CALL ATTENDANCE**

Present: Council Members Sellers, Tate and Mayor Kennedy  
Late: Council Members Carr (arrived 6:35 p.m.) and Chang (arrived at 6:38 p.m.)

**DECLARATION OF POSTING OF AGENDA**

City Clerk Torrez certified that the meeting's agenda was duly noticed and posted in accordance with Government Code Section 54954.2.

**PUBLIC COMMENT**

Mayor Kennedy opened the floor to public comment for items not appearing on the agenda. No comments were offered.

**CLOSED SESSION:**

City Attorney Leichter announced the below listed closed session items.

1.

**EXISTING LITIGATION:**

Case Title: Kennedy et al. v. Davis et al.  
Case Name/No.: Santa Clara County Superior Court Case No. CV 803679

2.

**EXISTING LITIGATION - CONFERENCE WITH LEGAL COUNSEL**

Authority: Government Code section 54956(a)  
Case Name: South Valley Streams for Tomorrow v. City of Morgan Hill  
Case Number: Santa Clara County Superior Court, CV 811014

**OPPORTUNITY FOR PUBLIC COMMENT**

Mayor Kennedy opened the closed sessions to public comment. No comments were offered.

**ADJOURN TO CLOSED SESSION**

Mayor Kennedy adjourned the meeting to closed session at 6:17 p.m.



## **RECONVENE**

Mayor Kennedy reconvened the meeting at 7:07 p.m.

## **CLOSED SESSION ANNOUNCEMENT**

City Attorney Leichter announced that the closed session items would be deferred to the end of the regular Redevelopment Agency/special City Council meeting agenda.

## **OTHER BUSINESS**

### **1. CITY MANAGER'S EMPLOYMENT AGREEMENT**

Mayor Kennedy distributed copies of the City Manager's contract. He reported that a subcommittee composed of Mayor Pro Tempore Carr and he met with City Manager Tewes. The subcommittee also met with outside legal counsel and held a number of meetings and discussions. As a result of these meetings and discussions, the Council subcommittee has returned with a proposed City Manager contract that includes the following:

- ▶ 5% increase effective July 1, 2002, resulting in an annual salary of approximately \$149,000.
- ▶ As the City has an existing mortgage assistance program for the City Manager, it is being proposed to change the interest rate to 4% on the pre existing housing loan. As part of the agreement, it would be the goal to set up an employee assistance housing program to which this loan would be a part of once the program is put into place.
- ▶ The term of the existing agreement would be extended through June 2005 and would include formal changes to the severance provisions of the agreement, allowing for a one-year severance pay.
- ▶ Allowances for automobile and health coverage by \$100 per month.
- ▶ An increase in the amount contributed to deferred compensation, phased over two years.
- ▶ Amending Section 7.2 of the contract as follows: "As an incentive to encourage continued exceptional performance, **the Council intends to provide a bonus in recognition of exceptional performance.** ~~upon execution of this Agreement, CITY agrees to pay to TEWES, in addition to the amounts described herein, a bonus of Ten Thousand Dollars (\$10,000) as a one time lump sum payment, subject to normal withholding and other taxes."~~
- ▶ In recognition of the City Manager's achievements of the goals established last year, a \$10,000 bonus is granted.

Mayor Kennedy stated that the Council is pleased with the City Manager's performance. The

Council is also pleased that the City has a strong and outstanding City Manager and that the contract reflects his performance. He thanked City Manager Tewes and congratulated him on his performance. With these comments and modification, he and Mayor Pro Tempore Carr presented the contract for Council consideration.

Mayor Pro Tempore Carr stated that it has been a pleasure to work on the City Manager's contract as it has provided him with the opportunity to spend time with the City Manager in order to discuss his goals and accomplishments. He said that the goals identified by the City Council were accomplished by staff, led by City Manager Tewes. The contract reflects the tremendous accomplishments that everyone should be proud of. He felt that the contract is one that the Council wants to send a message to the entire community that the Council has a strong City Manager, one who is doing the right things and is moving Morgan Hill to a place where it should go. He stated that the Council wants to extend a contract that would continue this relationship into the future. He thanked City Manger Tewes for what he has done for the Council/City.

**Action:**        *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council, on a 4-0-1 vote with Council Member Chang abstaining, **approved** the City Manager's contract, as amended.*

City Manager Tewes expressed his appreciation and thanked the Council for its vote of confidence. He stated that he enjoys working with the Council and serving the Morgan Hill community. He said that the Council has given him another year's worth of ambitious goals. He stated that the challenge of the goals are ones affected by economic times and that all of the resources may not be available to address the requests being made. He stated his appreciation of the political leadership provide by the Council and that he would be willing to continue to address the issues of administrative leadership. He thanked the Council for the support it is has given staff to meet the Council's ambitious goals with respect to additional resources. He stated that he and staff look forward toward working with the Council to improve the quality of life in Morgan Hill.

### **ADJOURN TO CLOSED SESSION**

Mayor Kennedy adjourned the meeting to closed session at 8:51 p.m. in order for the Council to conclude its discussions of the above listed closed session items.

### **RECONVENE**

Mayor Kennedy reconvened the meeting at 9:36 p.m.

### **CLOSED SESSION ANNOUNCEMENT**

City Attorney Leichter announced that no reportable action was taken in closed session.

### **ADJOURNMENT**

There being no further business, Mayor Kennedy adjourned the meeting at 9:37 p.m.

**MINUTES PREPARED BY:**

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**IRMA TORREZ, City Clerk**

**CITY OF MORGAN HILL  
SPECIAL CITY COUNCIL MEETING  
MINUTES SEPTEMBER 25, 2002**

**CALL TO ORDER**

Mayor Kennedy called the special meeting to order at 6:15 p.m.

**ROLL CALL ATTENDANCE**

Present: Council Members Sellers, Tate and Mayor Kennedy  
Late: Council Members Carr (arrived 6:35 p.m.) and Chang (arrived at 6:38 p.m.)

**DECLARATION OF POSTING OF AGENDA**

City Clerk Torrez certified that the meeting's agenda was duly noticed and posted in accordance with Government Code Section 54954.2.

**PUBLIC COMMENT**

Mayor Kennedy opened the floor to public comment for items not appearing on the agenda. No comments were offered.

**CLOSED SESSION:**

City Attorney Leichter announced the below listed closed session item.

**1.**  
**PUBLIC EMPLOYEE PERFORMANCE EVALUATION**  
Pursuant to Government Code 54957  
Public Employee Performance Evaluation: City Attorney  
Attendees: City Council, City Attorney

**OPPORTUNITY FOR PUBLIC COMMENT**

Mayor Kennedy opened the closed sessions to public comment. No comments were offered.

**ADJOURN TO CLOSED SESSION**

Mayor Kennedy adjourned the meeting to closed session at 6:17 p.m.

**RECONVENE**

Mayor Kennedy reconvened the meeting at 7:07 p.m.

**CLOSED SESSION ANNOUNCEMENT**

City Attorney Leichter announced that the closed session item would be deferred to the end of the Regular Redevelopment Agency and Special City Council meeting agenda.

**ADJOURN TO CLOSED SESSION**

Mayor Kennedy adjourned the meeting to closed session at 8:51 p.m. in order for the Council to conclude its discussions of the above listed closed session item.

**RECONVENE**

Mayor Kennedy reconvened the meeting at 9:36 p.m.

**CLOSED SESSION ANNOUNCEMENT**

City Attorney Leichter announced that no reportable action was taken in closed session.

**ADJOURNMENT**

There being no further business, Mayor Kennedy adjourned the meeting at 9:37 p.m.

**MINUTES PREPARED BY:**

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**IRMA TORREZ, City Clerk**

**AGENDA ITEM # 19**  
**Submitted for Approval: October 16, 2002**

**CITY OF MORGAN HILL  
SPECIAL CITY COUNCIL MEETING WITH  
GRAND OPENING COMMITTEE  
MINUTES SEPTEMBER 26, 2002**

**MEETING CANCELLED**

This meeting was cancelled due to the lack of a City Council quorum. The Community and Cultural Center Grand Opening Committees met and presented updates.

**MINUTES PREPARED BY:**

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**IRMA TORREZ, CITY CLERK**

**AGENDA ITEM # 20**  
**Submitted for Approval: October 16, 2002**

**CITY OF MORGAN HILL  
SPECIAL CITY COUNCIL MEETING WITH  
GRAND OPENING COMMITTEE  
MINUTES OCTOBER 10, 2002**

**MEETING CANCELLED**

The meeting was cancelled due to the lack of a City Council quorum. The Community and Cultural Center Grand Opening Committees met and presented updates.

**MINUTES PREPARED BY:**

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**IRMA TORREZ, CITY CLERK**



## ***CITY COUNCIL STAFF REPORT***

***MEETING DATE: October 16, 2002***

### **AWARD CONTRACT FOR CONSTRUCTION OF THE WELL ABANDONMENT PROJECT**

#### **RECOMMENDED ACTION(S):**

Award contract to Maggiora Bros. Drilling, Inc. for construction of the Well Abandonment Project in the amount of \$31,175.

**Agenda Item # 21**

**Prepared By:**

**Junior Engineer**

**Approved By:**

**Public Works Director**

**Submitted By:**

**City Manager**

#### **EXECUTIVE SUMMARY:**

This project is for well abandonment of three very old wells as required by SCVWD. Two are old agricultural wells never used by the City, but are currently located on City owned property. The third is an old City well next to the Dunne Avenue fire station that was abandoned due to its age. A previous bid opening in August, 2002 resulted in only one bid being submitted and this project was rebid per Council direction on August 21, 2002.

The new bid opening was held September 10, 2002. The bids received are listed below:

Maggiora Bros. Drilling Inc.	\$31,175
Layne Christensen Company	\$35,000

This low bid is \$2,000 below our original low bid. Staff has completed a background check on the low bidder and recommends award of the contract to Maggiora Bros. Drilling Inc. Funding exists in the current year to fund this project as identified below.

The work is scheduled to start in late early November and will be completed in 20 working days.

#### **FISCAL IMPACT:**

The total contract cost for this project is \$34,292 which includes a 10% contingency of \$3,117 and will be funded by the 2002-03 Capital Improvement Program (CIP) Budget, Project #504D00 (\$5,550), and the FY 2002-03 Water Operations budget (650) - contract services (\$28,742).



**CITY OF MORGAN HILL  
SPECIAL CITY COUNCIL MEETING  
MINUTES SEPTEMBER 22, 2002**

**CALL TO ORDER**

Council Member Tate called the special meeting to order at 10:00 a.m.

**ROLL CALL ATTENDANCE**

Present: Council Members Chang, Sellers, and Tate  
Absent: Council Member Carr and Mayor Kennedy

**DECLARATION OF POSTING OF AGENDA**

The meeting's agenda was duly noticed and posted in accordance with Government Code Section 54954.2.

**OPPORTUNITY FOR PUBLIC COMMENT**

Council Member Tate opened the floor to public comment for items not appearing on the agenda. No comments were offered.

**TOUR OF RECREATIONAL FACILITIES**

The City Council toured Loveland - Chilson Recreation Center located in Loveland, Colorado and Longmont Community Center located in Longmont, Colorado. It is the Council's intent to use the information gathered and incorporate the features that would enhance the proposed Recreation Center.

**ADJOURNMENT**

There being no further business, Council Member Tate adjourned the meeting at 5:15 p.m.

**MINUTES PREPARED BY:**

\_\_\_\_\_  
**IRMA TORREZ, City Clerk**

**CITY OF MORGAN HILL  
SPECIAL CITY COUNCIL MEETING  
MINUTES SEPTEMBER 23, 2002**

**CALL TO ORDER**

Council Member Tate called the special meeting to order at 8:30 a.m.

**ROLL CALL ATTENDANCE**

Present: Council Members Chang, Sellers, and Tate  
Absent: Council Member Carr and Mayor Kennedy

**DECLARATION OF POSTING OF AGENDA**

The meeting's agenda was duly noticed and posted in accordance with Government Code Section 54954.2.

**OPPORTUNITY FOR PUBLIC COMMENT**

Council Member Tate opened the floor to public comment for items not appearing on the agenda. No comments were offered.

**TOUR OF RECREATIONAL FACILITIES**

The City Council continued its second day of tours of recreation facilities, traveling to East Boulder Recreation Center located in Boulder, Colorado and Wheat Ridge Community Center located in Wheat Ridge, Colorado. It is the Council's intent to use the information gathered and incorporate the features that would enhance the proposed Recreation Center.

**ADJOURNMENT**

There being no further business, Council Member Kennedy adjourned the meeting at 1:15 p.m.

**MINUTES PREPARED BY:**

\_\_\_\_\_  
**IRMA TORREZ, City Clerk**

**CITY OF MORGAN HILL  
SPECIAL CITY COUNCIL MEETING  
MINUTES - OCTOBER 2, 2002**

**CALL TO ORDER**

Mayor Kennedy called the special meeting to order at 6:33 p.m.

**ROLL CALL ATTENDANCE**

Present: Council Members Sellers, Tate, and Mayor Kennedy  
Late: Council Member Chang (arrived at 6:45 p.m.)  
Absent: Council Member Carr

**DECLARATION OF POSTING OF AGENDA**

City Clerk Torrez certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

**PUBLIC COMMENT**

Mayor Kennedy opened the floor to comments for items not appearing on this evening's agenda. No comments were offered.

**CLOSED SESSIONS:**

City Attorney Leichter announced the following closed session

**CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION**

Authority:	Government Code Sections 54956.9(a)
Case Number:	CV 810111 Allivato v. City of Morgan Hill et al.
Court:	Santa Clara County Superior Court
Attendees:	City Council, City Manager, City Attorney

**OPPORTUNITY FOR PUBLIC COMMENT**

Mayor Kennedy opened the Closed Session item to public comment. No comments were offered.

**ADJOURN TO CLOSED SESSION**

Mayor Kennedy adjourned the meeting to closed session at 6:35 p.m.

**RECONVENE**

Mayor Kennedy reconvened the meeting at 7:04 p.m.

**CLOSED SESSION ANNOUNCEMENT**

City Attorney Leichter announced that there was no reportable action taken in closed session and that the Council would reconvene to closed session upon conclusion of business as listed in the Special and Regular City Council and Special Redevelopment Agency meeting agenda.

**ADJOURN TO CLOSED SESSION**

Mayor Kennedy reopened the closed session to public comment. No comments being offered, he adjourned the meeting to closed session at 9:38 p.m.

**CLOSED SESSION ANNOUNCEMENT**

City Attorney Leichter announced that no reportable action was taken on the above listed closed session item.

**ADJOURNMENT**

There being no further business, Mayor Kennedy adjourned the meeting at 10:26 p.m.

**MINUTES RECORDED AND PREPARED BY:**

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**IRMA TORREZ, City Clerk**

**CITY OF MORGAN HILL  
JOINT SPECIAL AND REGULAR REDEVELOPMENT AGENCY AND  
SPECIAL CITY COUNCIL MEETING  
MINUTES - SEPTEMBER 25, 2002**

**CALL TO ORDER**

Chairman/Mayor Kennedy called the special meeting to order at 6:30 p.m.

**ROLL CALL ATTENDANCE**

Present: Agency/Council Members Carr, Chang, Sellers, Tate, and Chairman/Mayor Kennedy

**DECLARATION OF POSTING OF AGENDA**

Agency Secretary/City Clerk Torrez certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

***Redevelopment Agency/City Council Action***

**CLOSED SESSIONS:**

**CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION**

Significant Exposure/Initiation of Litigation

Authority: Government Code Sections 54956.9(b) & (c)

Number of Potential Cases: 2

**2.**

**CONFERENCE WITH LEGAL COUNSEL - POTENTIAL AND EXISTING LITIGATION:**

**CONFERENCE WITH REAL PROPERTY NEGOTIATORS**

Legal Authority: Government Code 54956.8 & 54956.9(a) & (c) (1 potential case)

Real Property(ies) involved: APN 728-31-007 & 008; 25.50 acres located on the southwesterly side of Cochrane Road (St. Louise Hospital property)

City Negotiators: Agency Members; Executive Director; Agency Counsel; F. Gale Conner, special counsel; Rutan & Tucker, special counsel

Case Name: San Jose Christian College v. City of Morgan Hill

Case Numbers: Ninth Circuit Court of Appeal No. 02-15693

Closed Session Topic: Potential Existing Litigation/Real Estate Negotiations

**3.**

**CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION**

Authority: Government Code section 54956.9

Case Name: Ameron International Corporation v. City of Morgan Hill et al.

Case Number: Santa Clara County Superior Court; Case No. CV 772368

Attendees: City Council, City Manager, Public Works Director, City Attorney, Special Counsel Mark Strombotne

### **OPPORTUNITY FOR PUBLIC COMMENT**

Chairman/Mayor Kennedy opened the Closed Session items to public comment. No comments were offered.

### **ADJOURN TO CLOSED SESSION**

Chairman/Mayor Kennedy adjourned the meeting to closed session at 6:31 p.m.

### **RECONVENE**

Chairman/Mayor Kennedy reconvened the meeting at 7:08 p.m.

### **CLOSED SESSION ANNOUNCEMENT**

Agency Counsel/City Attorney Leichter announced that there were no reportable actions taken in closed sessions.

### **SILENT INVOCATION**

Chairman/Mayor Kennedy requested that everyone keep in their thoughts and prayers the fire fighters and families being affected by the fire that is occurring in the Croy Canyon area.

### **PLEDGE OF ALLEGIANCE**

At the invitation of Chairman/Mayor Kennedy, Chance Minnich led the Pledge of Allegiance.

### **PROCLAMATION**

Mayor Kennedy presented a proclamation to Mr. Wes Rolley declaring Wednesday, October 4, 2002, as *Arts Day in California*. Mr. Rolley invited individuals attending the Taste of Morgan Hill to stop by the City booth to view the art programs that will be taking place at the new Community & Cultural Center. Also, that everyone takes the opportunity to visit an artist or visit one of the galleries in town.

### **COMMENDATIONS**

Mayor Kennedy presented Certificates of Commendation to Chris Bertaccini, Juan Longoria, and James Holder for responding to cries of help from a female who was being repeatedly stabbed. Their quick actions and courage were instrumental in saving the life of the victim and in detaining the assailant until the police arrived. He expressed the Council's sincere appreciation for their assistance and intervention.

Chief Galvin stated that these gentlemen not only assisted the Police department but restrained the assailant and held him until he was taken into custody.

### **OTHER REPORTS**

City Treasurer Mike Roorda presented the Finance and Audit Committee Report to the City Council. He addressed two major topics: 1) how the City finished the fiscal year and its successes, and 2) the bond refinancing the City has been involved with that was approved by the City Council in December 2001. He said that the City has had a break-even year in terms of revenues/expenses. He focused on the General Fund, indicating that half way through Fiscal Year 2001-02, there was a slow start to the revenue stream and the Transient Occupancy Tax (TOT) and that it did not appear that they would reach the planned levels. The Council took action, working with City staff, to come up with a plan to reduce expenses across the City by 5% with the objective of not impacting City services. He noted that the City came in at 93% of the budget due to staff's efforts. In terms of revenue, the City prides itself for having a diverse source of external funds and does not focus only on property, sales or vehicle taxes. Even though the City had some short falls in the hotel TOT and drop in sales tax, the City had some positive results in terms of property tax, some a one time benefit and some ongoing. There were also positive results in the vehicle tax. Overall, the City met the original objectives in terms of revenues. He said that there is a surplus that may be short \$559,000 for reasons to be explained by finance staff at a future date. He said that the City had a break-even fiscal year, a success given how the year began. It was his belief that this was a testament to staff's reaction to the tough economic climate.

Mr. Roorda addressed the bond refinancing for the South County Regional Wastewater Authority Bonds. He stated that the City is close to completion of the sewer bond refinancing and that the City has the final numbers. He said that the City was able to take its average interest rates on the issue down from 5.5% to approximately 3.8%. In terms of dollars, he said that there is a significant savings. The overall reduction in terms of dollars equates to approximately \$2.3 million ( interest payments). He indicated that the City was able to reduce its interest payments annually by approximately \$110,000 going out to the year 2022.

Mayor Kennedy noted that staff was able to achieve an overall expenditure reduction by 7%. He commended the City Manager and staff for achieving these savings.

### **PUBLIC COMMENT**

Executive Director/City Manager Tewes acknowledged the attendance of Girl Scout Troop 711 who were present to attain their civic badge, including the daughters of many prominent city employees. He advised the City Council/Agency Board and the community regarding the fire west of town. He said that as of the 6:00 p.m. briefing, the Santa Clara County Sheriff's office has proclaimed Santa Clara County a local emergency. This action will allow victims of the fire to take advantage of various federal and state programs. He said that the fire has consumed approximately 2,500 acres and

continues to burn in a southerly and southwest direction, away from Morgan Hill. He said that the fire started in an area on Croy Road, two miles west of Uvas Road. He indicated that approximately 35 structures have been effected: 11 destroyed and 4 with major damage. He stated that there is currently a mandatory evacuation of the residents in the area near Redwood Retreat Road and the Summit Road area. He indicated that shelters have been opened by the Red Cross at Live Oak High School with ten families registered thus far. He said that CT English School in Santa Cruz County is open for individuals seeking to sign up for assistance through the Red Cross. Also, the Morgan Hill Chamber of Commerce is sponsoring a community-wide effort to raise funds to assist victims and to provide access to a variety of services for those who have been displaced by the fire. He said that the California Department of Forestry (CDF) has a public information number if anyone needs further information about the fire and its effects.

Mayor Kennedy indicated that he visited the command center at Christmas Hill Park in Gilroy and met with the CDF Commander of Operations. He stated that he was impressed with the command center and that it is being professionally handled. He indicated that Morgan Hill is not at risk and that the City is supporting efforts in a variety of ways.

Chairman/Mayor Kennedy opened the floor to public comments for items not appearing on this evening's agenda. No comments were offered.

## ***Redevelopment Agency Action***

### **CONSENT CALENDAR:**

Agency Member Carr requested that item 1 and Agency Member Sellers requested that item 2 be removed from the Consent Calendar.

#### **1. AGREEMENT WITH THE CHAMBER OF COMMERCE**

Director of Business Assistance and Housing Services Toy presented the staff report. He informed the Council that the Chamber of Commerce (Chamber) has indicated that they would provide the same level of services in addition to augmented services related to economic development and tourism in the downtown area. He stated that the additional services would cost approximately \$35,000 more than what is normally allocated at \$90,000 per year. He said that the new services would include: website design for economic development and tourism, implementation of a new business retention program, attending a trade show with California Technology Trade and Commerce, and updating a trade show both for both economic development and tourism as well as expanding the economic development and tourism section of their brochures. He informed the Agency Board that Sunday Minnich, Executive Director of the Chamber, was present should an in depth presentation of their proposal be requested.

Sunday Minnich indicated that the Chamber's marketing plan is before the Council, noting that an



economic development strategy is in the process. In meeting with City staff and going over this year's contract, she said that there were some items that could be pulled from the marketing plan that the Chamber felt needed to be done immediately and pushed up the process. She said that the most costly item would be to develop an economic development website where jobs available in Morgan Hill would be posted. Also, to be listed are sites available for development. She indicated that the Chamber's website would be intermingled with the City's website. She said that the last retention survey conducted in Morgan Hill was in 1997. Because of the down economy, the Chamber felt that it was important to survey the current businesses in Morgan Hill to find out how they are doing and to determine which businesses are at risk. The Chamber would talk to businesses at risk and try to save these businesses. She stated that the Chamber would sit down with City staff to go over the survey results, selecting businesses that should be approached, inviting Council members to the meeting. The Chamber has also added an economic development trade show through the California Trade Commerce. The Chamber would also join City staff at the International Council of Shopping Center conference to try to boost some of Morgan Hill's attraction areas. She indicated that the Chamber has added these items to the contract as they were deemed as priority items. It is felt that these items are ones that did not need to coincide with the economic development strategy because it is concentrating on retention and marketing.

Agency Member Tate inquired if everything being proposed in the Chamber's contract would be subtracted from the marketing plan so that there would be no overlap or double counting?

Ms. Minnich indicated that she pulled out items from the marketing plan that are one year/time only expense and that the Chamber felt needed to be developed at this time. The Chamber would not need this money again next year because it would only involve maintenance.

Agency Member Carr inquired if the business survey would be conducted solely with Chamber members or would it be a community-wide business survey that would include non Chamber members?

Ms. Minnich indicated that the survey would be conducted community-wide. As it is a contract in partnership with the City, it would not be addressed to members only and that the Chamber would want to target as many businesses that exist in Morgan Hill.

Agency Member Carr noted that the Chamber currently provides quarterly reviews to staff. He inquired if the Chamber would be open to include a six-month review before the Council/Agency to talk about goals and how the partnership and achievements have been attained as part of this contract?

Ms. Minnich responded that the Chamber would be willing to report back every six months to present the Agency and community members with an update on the partnership and achievements.

Chairman Kennedy addressed the proposed changes that increased the Chamber's budget from \$90,246 to \$125,000. He requested that Ms. Minnich identify what the Chamber's intentions are in

terms of facilities and staffing allocations.

Ms. Minnich said that the Chamber divides its staff and takes percentages on how much time or how much space is being allocated for different activities. She said that the Chamber took the percentage of staff time that it would take to fulfill the contract and that this would equate to the salary component. The facility allocations include the use of copy machines, leases on equipment, postage, utilities, administrative costs, and include a portion of the office space used. She indicated that the Chamber took the percentage of how much time is spent on the different activities undertaken by Chamber staff. She indicated that the total budget for administration is approximately \$89,000 and that out of this, the Chamber is requesting \$39,000 from the City.

Vice-chairwoman Chang inquired if relocation of the Chamber's office is still a possibility?

Ms. Minnich responded that relocation of office space would occur with or without the marketing plan in the near future. She indicated that the Chamber has in place a capital building fund and that it would pull from its membership base. She indicated that none of the money being requested under this contract would go toward the Chamber's proposed office relocation.

Agency Member Sellers stated that a question that is commonly asked is why an entity is requesting more or less than was requested in prior years and what is being done for that amount of money. He said that in looking at the budget, the Chamber references last year's percentage that the City provided as a percentage of the overall budget. He noted that the Chamber did not provide this information in the Fiscal Year 2002-03 contract. He requested that Ms. Minnich identify the City's contribution to the overall budget.

Ms. Minnich informed the Agency that the Chamber's budget is \$480,000. Out of this amount, the Chamber is requesting that the City fund \$125,000. She indicated that these funds would be used for administrative and salary expenses. It does not include memberships, programs or events. She indicated that the Chamber maintained the 34% City contribution in the overall budget. She stated that the Chamber did not change anything from last year's \$90,000 contract. The Chamber has added responsibilities in this year's proposed contract that increased costs. She said that the proposed survey would take additional staff time. A new design on the trade show booth is proposed so that the Chamber can be presentable at tourism and economic development trade shows.

Agency Member Sellers felt that the direction the Chamber was heading made sense. However, he felt that the Agency has to do its homework to make sure that the City is going in a direction that is long term. He said that there was an assumption years ago to provide initial funding to the Chamber and that funding would be reduced in subsequent years. He expressed concern that this has not been a cognizant result, noting that the Chamber's funding requests have gotten higher. He felt that the Agency needs to go back and address funding, particularly with the cutbacks made this year and the bigger discussion about economic development. Also, the City has provided resources for the downtown organizations. He felt that the City needs to look at the entire picture. He recommended that funding be maintained as

status quo with a broader discussion taking place.

Ms. Minnich felt that some of the initiatives included in the Chamber's scope of work are one year commitments. She recollected that funding for the Chamber has gone down from \$175,000 in 1994 to \$140,000. The Chamber has been funded at \$90,000 for the past three years. This year, the Chamber is asking for \$125,000 because there are immediate needs attributed to the down economy. She felt that the Chamber/City needs to take a proactive approach. She did not believe that the retention survey can wait as businesses are in jeopardy and in need of immediate assistance. She did not believe that an economic development website or trade shows can wait. She felt that there were immediate initiatives that need to take place now and that they can be folded into the marketing plan should it come to fruition.

Chairman Kennedy inquired as to the timeframe for delay Agency Member Sellers was contemplating?

Agency Member Sellers stated that he did not know if the contract needed to be delayed. He did not want to see this be an allocation without discussion until next year. He felt that the Agency was in the process of going through discussions and that it has not answered fundamental questions such as how does a downtown organization integrates with this contract. He felt that Ms. Minnich made a good case that initial steps need to be taken quickly. However, the next steps need to be discussed by the Agency. He did not want to provide additional money this year without a long term plan in place that would get the City where it wants to be. He said that the full allocation could be granted but that the Agency would need to agree to timelines and have broader discussions.

Vice-chairwoman Chang recommended that the City allocate \$90,000 and that the remainder of the funding be held off as she did not know the City's economic direction.

Agency Member Carr felt that \$90,000 is important to the Chamber's budget and would support this level of funding this year. However, the additional dollars are to be used for items that the Agency/Council has not yet set a direction. He said that the Agency has been discussing economic development for over a year, noting that the discussion on economic development would be before the Agency/Council in November in order to decide a direction that he hopes would include additional partnership opportunities with the Chamber. He appreciated that some of the items identified are priorities and are ones that should be started right of way. If these are items that have been identified by the Chamber as priorities, he felt that the Chamber should reallocate some of its resources in order to make these priorities. He noted that the Council/Agency has not identified these items as priorities for the City. Therefore, allocating additional dollars for these items is not something that he is supportive of at this time because he was not sure that these were priority items. He stated that he would be supportive of the \$90,000 for this year's allocations, similar to funding granted in the past, and recommended that the Agency has a broader discussion at a later date about additional dollars and about the future of the City's partnership with the Chamber.

Agency Member Tate stated that he agrees with what has been stated but that it was his belief that some of the Chamber's priorities have been priorities for a long time. He felt that these are priority items and

that he did not believe that they were long term commitments. The commitment is to allocate an additional \$35,000 in order to implement items that are overdue. He stated his support of the Chamber's marketing plan and did not believe that the action before the Agency would take away from the marketing plan. He stated his support for the approval of the contract with the understanding that this is a one year \$35,000 increase and that future funding would be tied to the marketing plan.

Chairman Kennedy said that serving as an ex-officio member on the Chamber, he has a certain comfort level with what the Chamber is doing and the direction that it is heading. He stated his support of moving forward with the contract. He agreed that the City should watch how it spends its limited resources. However, overall, the City has had an excellent working relationship with the Chamber and that he would like to see this relationship continue. He stated that he would support the agreement for \$125,000.

Agency Member Tate stated his support of staff's recommended action.

Agency Member Sellers stated that he would support the motion subject to modification and that the Agency disciplines itself to review the overall marketing plan by the end of the year. Should modifications be made to the marketing plan, that the modifications be implemented as part of the Chamber's contract. Agency Member Tate and Chairman Kennedy stated their support of this compromise solution.

**Action:**        *Agency Member Tate made a motion, seconded by Agency Member Sellers, to **Authorize** the Executive Director to prepare and execute a contractual services agreement with the Morgan Hill Chamber of Commerce in the amount of \$125,000 for Fiscal Year 2002/03, subject to Agency General Counsel review and approval.*

Agency Member Carr stated that he would not be able to support the motion and not because he does not support the City's partnership with the Chamber. He noted that the Agency would be considering an economic development and its direction in November. He felt that it would be appropriate, at that time, to add items that lend themselves toward the direction of economic development. Once the City has an agreement on what the direction is, that is when the City should allocate funding. He did not recommend spending money before deciding the direction of economic development. He acknowledged that the City has had a long-standing partnership with the Chamber of Commerce and that is why he would support the \$90,000 to continue the partnership. However, the additional direction is one that the Agency has not set. He did not believe that spending money for this additional direction is the correct process to undertake. He stated that he could not support the motion although he is in support of the partnership.

Agency Member Sellers stated that he saw some of the items identified by the Chamber that need to take place. He encouraged the Chamber to start developing the workplan items identified. He recommended that the Chamber keep in mind that the City is looking at changing directions. If there are items planned further out that they are looked at with the understanding that they would be reviewed again at a later date.

Vice-chairwoman Chang stated her concurrence with Agency Member Carr's comments. She inquired if a timeline can be given to the Chamber to report back to the City as far as the additional \$35,000 and the direction that they are heading? She recommended a check point to see where the City and the Chamber are heading (e.g., three month check point).

Agency Member Carr inquired what would happen should the Agency head toward a different direction in three months? Would the Agency take funding away? He inquired whether the City should wait until the Agency knows it is heading in the same direction?

Agency Member Tate felt that it was up to the Chamber figure out how the funds are to be spent.

Vice-chairman Chang recommended that the Agency allocate \$90,000 and that the \$35,000 be allocated three months from now.

Agency Member Sellers did not believe that the Chamber can proceed with some of the identified initiatives knowing that the City may change direction. He felt that the solution to Agency Member Carr's concern is that in three months, should the Agency decide to move in a different direction, the Agency request that the contract be modified so that a different direction can be taken.

Agency Member Carr noted that what has been stated this evening by the Agency is that there are things that it would like the Chamber to get started on as soon as possible. If the City waits on the additional \$35,000, they would not be able to start on the new initiatives. If the entire funding is granted, the Chamber would proceed with its website development and other items and three months down the road, the Agency may decide that it wants them to allocate their resources in a different direction. He expressed concern that the Chamber would have already spent these dollars. He felt that the Chamber should be adjusting the \$95,000 that the Agency provides to reflect the new \$35,000 priorities instead of funding the same priorities that have taken place. In November, when the Agency sets its direction regarding economic development and it is found that there are additional items that should be partnered with, the Agency should be able to enter into contacts and fund the work. He did not believe that the City should fund initiatives until the Agency has agreed to the direction it is heading.

Vice-chairwoman Chang stated that she was bothered by the fact that the Agency may change its direction. It was her hope that should the full allocation be granted the Chamber would not move forward with the new items immediately. She inquired what would happen should the Agency change its direction?

Chairman Kennedy noted that Ms. Minnich has stated her willingness to provide additional backup information and that there would be a checkpoint before the Chamber proceeds. He recommended that a checkpoint/review be made before the final commitment is made. He stated that he did not want to micro manage the Chamber.

Vice-chairwoman Chang stated that she did not want to see the \$35,000 double spent, especially in hard

times like this.

Agency Member Sellers noted that Chairman Kennedy pointed out that more than half of the funding increase is for facilities and staff allocations. This would result in the dedication of more time, energy and resources by the Chamber of Commerce. He felt that more than half of the funds would be in process. If in three months, the Agency changes direction, the City has three-quarters of the funding that can be diverted, should this be the decision made.

Vice-chairwoman Chang expressed concern that the Agency/Council may change direction in three months which would result in the Chamber changing direction. Should the Agency decide in three months to take a different direction (divert funding allocation to another source/entity) and is not interested in tourism, would the Chamber be required to return the funding?

Chairman Kennedy said that there is flexibility in reallocating the \$35,000 funding.

Agency Member Tate noted that the City and the Chamber have agreed to a six-month review and did not believe that there is a need to include review in a motion when there are partnerships.

Chairman Kennedy stated that the record could indicate what the Agency has discussed its intention of the motion.

Agency Member Sellers requested that a three-month review be included in the motion and that the Chamber proceed with the understanding that there may be a modification to the contract, subject to final discussion on economic development.

**Action:**        *Agency Members Tate and Sellers **amended** their motion to include a three-month review and that the Chamber of Commerce proceeds with the understanding that there may be a modification of the contract, subject to final discussion on economic development.*

Agency Member Carr requested clarification as to whether the dollars would be allocated on a quarterly basis.

Agency Member Tate indicated that quarterly allocations were not a part of his motion.

**Action:**        *The motion carried 4-1 with Agency Member Carr voting no.*

## **2.        COMMUNITY PLAYHOUSE FUND-RAISING CONCEPT**

Agency Member Sellers indicated that he requested that this item be removed from the consent calendar in order to give added publicity to the effort. He wanted the public to know that this project is being undertaken.

Chairman Kennedy opened this item to public comment.

Rod Pintello, Member of the Board of Directors with South Valley Civic Theater, indicated that the board directors are seeking Agency approval of the fundraising concept in order to help defray the cost for the restoration of all the community playhouse seats. He indicated that South Valley Civic Theater would like to begin selling commemorative seats at a \$300 per seat donation.

Chairman Kennedy thanked Mr. Pintello for taking up the challenge to help raise funds for the theater.

Agency Member Sellers recommended that tiered rates be considered. He felt that end seats and other seats would attain a higher price and that these additional funds could go toward the Civic Theater Group. He was pleased to see that the Theater group was willing to oversee this fundraising effort.

No further comments were offered.

**Action:**        *On a motion by Agency Member Sellers and seconded by Agency Member Carr, the Redevelopment Agency unanimously (5-0) **Approved** South Valley Civic Theater's Fundraising Concept to "Sell" Theater Chairs for the Community Playhouse.*

## ***City Council Action***

Mayor Pro Tempore Carr requested that item 4 be removed from the Consent Calendar.

**Action:**        *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council **Approved** (5-0) Consent Calendar Items 3 and 5-8 as follows:*

3.        **AUGUST 2002 FINANCE AND INVESTMENT REPORT**

**Action:** ***Accepted** and **Filed** Report.*

5.        **APPROVE PROCLAMATION FOR RACE EQUALITY WEEK**

**Action:** ***Approved** Proclamation Proclaiming September 23-29, 2002 as "Race Equality Week."*

6.        **SURPLUS PROPERTY**

**Action:** ***Declared** the Gazebo Structure Being Constructed for the 2002 Taste of Morgan Hill As Surplus; and **Authorized** Staff to Sell This Structure At a Silent Auction For a Minimum Bid of \$1,000.*

7.        **APPROVAL OF "COPS" IN SCHOOLS 2002 GRANT**

**Action:** ***Accepted** the COPS in Schools Grant Award of \$125,000 and **Appropriated** \$114,228 in Matching Funds Over the Three Year Period; and **Authorized** an Increase in the Number of Sworn Police Officers in the Morgan Hill Police Department from 32 to 33.*

8. **FINAL JUNE 2002 FINANCE AND INVESTMENT REPORT**

**Action:** *Accepted and Filed Report.*

4. **AMENDMENT TO THE MANAGEMENT RESOLUTION - Resolution No. 5616**

Mayor Pro Tempore Carr requested that Chief Galvin present a brief report on what this action would mean as far as level of service to the community.

Chief of Police Galvin indicated that the police department functions in three major divisions: 1) field operations, 2) support services, and 3) special operations. He said that when Captain Sullivan moved to the City of Woodland, it gave him the opportunity to review the organization and its structure. He indicated that the City Manager, police staff, management team and the Police Officers Association are in support of the recommended a two-lieutenant approach along with four sergeant positions, eliminating the captain position. This organizational change would not increase this year's budget and would afford the opportunity to promote from within the ranks.

**Action:** *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Carr, the City Council unanimously (5-0) **Adopted** Resolution No. 5616, Amending the Management, Professional and Confidential Employees Resolution No. 5571 to Delete the Position of Police Captain and Assign a New Job Description and Salary Range for Position of Police Lieutenant.*

## ***Redevelopment Agency Action***

### **OTHER BUSINESS:**

9. **MORGAN HILL DOWNTOWN ASSOCIATION (MHDA) AGREEMENT**

Director of Business Assistance and Housing Service Toy presented the staff report and indicated that staff has found that MHDA has satisfied and substantially fulfilled the agreement. Staff is recommending that the Agency accept the workplan and continue the current agreement in effect. He indicated that Dan Craig, interim executive director, as well as board members of MHDA, were present to address the Agency.

Agency Member Sellers stated that he serves on the board of the Morgan Hill Downtown Association and inquired if it would be appropriate to remain on the dias or should he recuse himself from this item?

Agency Counsel Leichter said that if Agency Member Sellers serves on a non compensated position, he would not normally need to recuse himself under the Political Reform Act. However, should Agency Member Sellers feel that there may be other biases, he may wish to step down, noting that this is a decision he would have to make.



Agency Member Sellers stated that priority dictates that he recuse himself from this item.

Dan Craig circulated to the Agency members the MHDA work plan for the upcoming year. He identified the process undertaken to date, including workshops. He indicated that staff and a wide range of community members have been involved in the process. He said that the purpose of the work plan is to have a sense of direction and focus to the organization. It is also a means of being accountable to the community. The appendices include the budget and projected budgets for the next three years and also the results of the workshops. He stated that working in Morgan Hill has been a delight and a great experience. He said that there is spirit and pride in the community. He considers the proposed workplan in parallel with the Downtown Task Force and that he would be willing to present the workplan to the Downtown Task Force. He said that the MHDA Board is going to weigh in on the key points of the Downtown Task Force position and direction, providing specific input. He indicated that the Chamber is active in the workplan and that Ms. Minnich chairs the promotion committee. He said that City staff and Council members have developed excellent relationships. He circulated the quarterly report and stated that everything listed in the scope of work have been completed with the exception of a few items. He indicated that MHDA's tax exemption is in progress. Other items that have been undertaken that were not a part of the scope of work include: participation in the Community and Cultural Center Grand Opening Committee, MHDA has a seat on the Chamber's economic development committee, began a search for a permanent executive director, working on the safe trick or treat campaign, hired a graphic design to create a logo, and had consultation on two facades.

Agency Member Tate stated that he was impressed with the productivity of the workshop held and that several individuals signed up for committees, noting that he was not able to attend this workshop session. He inquired if Mr. Craig followed a formula to suggest action items or whether all the work was accomplished in the two-hour session, stating that the action items were on target?

Mr. Craig responded that the work was accomplished in the two-hour session. The attendance was a matter of getting the word out about the meeting and was indicative of the support for improving the downtown.

**Action:** *On a motion by Agency Member Tate and seconded by Agency Member Carr, the Redevelopment Agency Board, on a 4-0 vote with Agency Member Sellers recusing himself, **Approved** the Morgan Hill Downtown Association's First Quarter Report and Annual Work Plan; and **Continued** Implementation of the First Year Funding Agreement in an Amount Not to Exceed \$86,000.*

## ***Redevelopment Agency and City Council Action***

### **OTHER BUSINESS:**

#### **10. REVIEW OF CITY COUNCIL AND REDEVELOPMENT AGENCY NOVEMBER, DECEMBER AND JANUARY MEETING SCHEDULE**

Council Services and Records Manager Torrez presented the staff report.

In response to Chairman/Mayor Kennedy's question, Executive Director/City Manager Tewes indicated that the City would be conducting its furlough period Monday, December 23, 2002 through Wednesday, January 1, 2003 with City offices reopening Tuesday, January 2, 2003.

Agency/Council Member Tate noted that should the Agency/Council cancel its December 25 and January 1 meetings, which need to occur as these are legal holidays, the Agency/Council would not have a meeting for almost an entire month from December 18 until January 15. He said that a special meeting could be scheduled for January 8 but noted that there would not be time for staff to prepare an agenda for this date.

Agency/Council Member Sellers stated that a break between meetings during the holiday period occurs because of the time of year and what the City is trying to accomplish. He noted that the Agency/Council does not need to meet as often as it does during the holiday period. He noted that the previous holiday meeting schedules have not been a problem in the past. He stated that the Wednesday before Thanksgiving is a difficult time for individuals to meet and that individuals try to get out of town. He requested that if a third meeting is needed in November that it be scheduled on November 13.

**Actions:**     *On a motion by Agency/Council Member Sellers and seconded by Agency/Council Member Tate, the Agency/City Council, unanimously (5-0) **Directed** that the following meetings be cancelled: November 27, December 25, 2002 and January 1, 2003. If a third meeting is needed in November, that an optional meeting be scheduled for November 13.*

## ***City Council Action***

### **OTHER BUSINESS:**

#### **11.     ECONOMIC DEVELOPMENT SUBCOMMITTEE**

City Manager Tewes presented the staff report and recommended that the City Council establish a two-member Council subcommittee to work with City staff, from time to time, in order to review specific economic development assistance proposals. He indicated that staff receives proposals and ideas from private developers and land owners who suggest ways in which the City can help them. Staff would appreciate the opportunity to review these requests with a subcommittee of the City Council. He indicated that at the last meeting, the Council stated that it wanted to agendaize this item so that it can discuss this issue and other purposes to which it might ask the subcommittee to follow up on.

Council Member Tate inquired why the Council is considering the appointment of a Council subcommittee when it has not been decided whether this is the Council's strategy. He noted that the staff report states that the subcommittee would make decisions on how the City would spend money and that

he did not know whether the Council has decided that it would spend money on specific requests at this time for business assistance.

Council Member Chang noted that Council members serve on a number of subcommittees, some being short term and some long term committees. As a new subcommittee is being proposed, she recommended that this be a rotating two-member Council subcommittee and that an alternate Council member also be appointed. She felt that this would be a good subcommittee to establish as the City Manager and staff needs Council input before moving forward with a project. She felt that this would be the mechanism to provide that direction.

Council Member Sellers recommended that two council members be appointed to the subcommittee. He said that it would also help to define the scope of work for the subcommittee. The subcommittee is to provide preliminary recommendations as to how the Council could proceed with economic development. He felt that through a subcommittee recommendation, the Council can identify long term directions as they relate to marketing, tourism and/or economic development. He recommended that any business assistance packages return to the Council. He felt that the establishment of a subcommittee would avoid some of the business assistance problems early on in the process. He felt that it would be helpful to narrow down 5-8 items that staff should perform and identify which items should proceed immediately and which do not have merit. He supported a rotation of subcommittee members and that this should be a standing committee at least for the next couple of years.

Mayor Kennedy stated that he would recommend the appointment of Mayor Pro Tempore Carr and Council Member Tate. He said that he would support Council Member Chang's recommendation that there be a rotation of Council members on this committee as long as it is a one-year rotation commitment similar to the Finance & Audit Committee and that the rotations be staggered.

Council Member Sellers suggested that Council Member Chang serve as an alternate to the subcommittee.

**Action:** *On a motion by Council Member Chang and seconded by Council Member Sellers, the City Council unanimously (5-0) **approved** the Mayor's appointment of Mayor Pro Tempore Carr and Council Member Tate to serve on the Economic Development Subcommittee with Council Member Chang serving as alternate.*

### **FUTURE COUNCIL-INITIATED AGENDA ITEMS**

Council Member Tate requested that discussion of scheduling meetings for the Council be agendized for general discussion. This would allow the Council to discuss its expectation. He felt that sometimes there are a lot of critical meetings that get overlapped and that the City needs to manage around this somehow.

Council Member Chang said that it is difficult to hear that a meeting is scheduled at 4:30 p.m. when other appointments are scheduled weeks in advance to find out the day before that a special meeting has been called. She felt that the Council needs to be given the opportunity to make the decision of calling the special meeting.

Council Member Sellers requested that discussion include ways in which the Council can work better with staff in developing the agenda as there were a lot of administrative and staff generated issues that need to be addressed. He recommended that there be an internal Council process by which there is review of agendas prior to their development so that the Council has political and administrative review of the agenda in order to maximize the Council's time commitment.

Mayor Kennedy felt that the Council needs a criteria for scheduling meetings and felt that it would be helpful to ask staff to come up with a proposed criteria for regular agenda items as well as special agenda items as a starting point for discussion.

Council Member Chang requested clarification as to what items/issues would constitute calling a special meeting in 24-hours.

### **ADJOURN TO CLOSED SESSION**

Agency Counsel/City Attorney Leichter noted that the Agency/Council has concluded its discussion on all closed session items listed on the regular agenda. She indicated that there are two closed sessions remaining on the two other special meeting agendas.

### **ADJOURNMENT**

There being no further business, Chairman/Mayor Kennedy adjourned the meeting at 9:09 p.m.

### **MINUTES RECORDED AND PREPARED BY:**

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**IRMA TORREZ, Agency Secretary/City Clerk**

**CITY OF MORGAN HILL  
JOINT SPECIAL AND REGULAR CITY COUNCIL AND SPECIAL  
REDEVELOPMENT AGENCY MEETING  
MINUTES - OCTOBER 2, 2002**

**CALL TO ORDER**

Mayor/Chairperson Kennedy called the meeting to order at 6:33 p.m.

**ROLL CALL ATTENDANCE**

Present: Council/Agency Members Sellers, Tate; and Mayor/Chairman Kennedy  
Late: Council/Agency Member Chang (arrived at 6:45 p.m.)  
Absent: Mayor Pro Tempore/Agency Carr

**DECLARATION OF POSTING OF AGENDA**

City Clerk/Agency Secretary Torrez certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2

***City Council Action and Redevelopment Agency Action***

**OPPORTUNITY FOR PUBLIC COMMENT**

**CLOSED SESSION:**

City Attorney/Agency Counsel Leichter announced the below listed closed session items.

**1.**

**CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION**

Significant Exposure/Initiation of Litigation

Authority: Government Code Sections 54956.9(b) & (c)

Number of Potential Cases: 2

**2.**

**CONFERENCE WITH LEGAL COUNSEL - POTENTIAL AND EXISTING LITIGATION:  
CONFERENCE WITH REAL PROPERTY NEGOTIATORS**

Legal Authority: Government Code 54956.8 & 54956.9(a) & (c) (1 potential case)

Real Property(ies) involved: APN 728-31-007 & 008; 25.50 acres located on the southwesterly side of Cochrane Road (St. Louise Hospital property)

City Negotiators: Agency Members; Executive Director; Agency Counsel; F. Gale Conner, special counsel; Rutan & Tucker, special counsel

Case Name: San Jose Christian College v. City of Morgan Hill

Case Numbers: Ninth Circuit Court of Appeal No. 02-15693

Closed Session Topic: Potential Existing Litigation/Real Estate Negotiations

**3.**

**CONFERENCE WITH REAL PROPERTY NEGOTIATOR**

Legal Authority: Government Code Section 54956.8

Property: APN 817-29-004, 605 Tennant Avenue, 439 sq ft

Negotiating Parties: For Property Owners: John Lincoln, Jr, Trustee of the John Lincoln Jr. Trust; Robert E. Lincoln; John S. Lincoln

Under Negotiation: For City: Richard Hoffman; Jim Ashcraft; F. Gale Connor  
Price and Terms of Payment

**4.**

**CONFERENCE WITH REAL PROPERTY NEGOTIATOR**

Legal Authority: Government Code Section 54956.8  
Property: APN 817-08-026, 740 Tennant Avenue, 23.250 sq ft  
Negotiating Parties: For Property Owners: Arthur A. & Susan A. Biederman  
For City: Richard Hoffman; Jim Ashcraft; F. Gale Connor  
Under Negotiation: Price and Terms of Payment

**5.**

**CONFERENCE WITH REAL PROPERTY NEGOTIATOR**

Legal Authority: Government Code Section 54956.8  
Property: APN 817-58-009, 16550 Railroad Avenue, 22.146 sq ft  
Negotiating Parties: For Property Owners: Dieter Folk; Steven P. Belzer  
For City: Richard Hoffman; Jim Ashcraft; F. Gale Connor  
Under Negotiation: Price and Terms of Payment

**6.**

**CONFERENCE WITH REAL PROPERTY NEGOTIATOR**

Legal Authority: Government Code Section 54956.8  
Property: APN 817-59-006, 16610 Cory Lane, 303 sq ft  
Negotiating Parties: For Property Owners: Gary and Donita R. Cupps  
For City: Richard Hoffman; Jim Ashcraft; F. Gale Connor  
Under Negotiation: Price and Terms of Payment

**OPPORTUNITY FOR PUBLIC COMMENT**

Mayor/Chairman Kennedy opened the closed session items to public comment. No comments were offered.

**ADJOURN TO CLOSED SESSION**

Mayor/Chairman Kennedy adjourned the meeting to closed session at 6:35 p.m.

**RECONVENE**

Mayor/Chairman Kennedy reconvened the meeting at 7:04 p.m.

**CLOSED SESSION ANNOUNCEMENT**

City Attorney/Agency Counsel Leichter announced that there were no reportable actions taken in closed sessions.

**SILENT INVOCATION**

Mayor Kennedy requested that individuals whose lives have been affected by the fires that occurred last week be remembered, noting that many have lost their homes and their valuable belongings.

**PLEDGE OF ALLEGIANCE**

At the invitation of Mayor/Chairman Kennedy, Dennis Pinion led the Pledge of Allegiance.

## **INTRODUCTION**

Recreation and Community Services Manager Spier introduced recently hired Deborah Boss, *Event Coordinator*

## **PROCLAMATION**

Mayor Kennedy presented Lisa Ramos, Community Solutions, with a Proclamation recognizing October 2002 as *Domestic Violence Awareness Month*.

Lisa Ramos, Programs Specialist for the Solutions to Violence Program through Community Solutions, indicated that the two basic parts of the domestic violence program are interventions through La Isla Pacifica and prevention, bringing domestic violence awareness to the community.

## **CITY COUNCIL REPORT**

Mayor Pro Tempore Carr's report was deferred to a future meeting date.

## **CITY MANAGER'S REPORT**

City Manager Tewes stated that earlier this week, he had the opportunity to attend the annual conference of the International City and County Management Association. He said that there were many useful sessions but that some of the more interesting sessions related to home land security issues. He found one session to be of interest that was the session relating to Arlington County who took over the responsibility for emergency response at the Pentagon on September 11, 2001. He indicated that Arlington County had agencies from a 100-mile radius responding and assisting the Pentagon. It was also stated that it is important to make sure that technology, particularly radio communications, are brought up to date. It was indicated that Arlington spent a lot of time and money on a radio interoperability project so that radios from one agency to another can interact during emergencies. He informed the Council that Santa Clara County is in the middle of planning a radio interoperability project and that it is staff's intention to give the Council a full report in the near future. This would allow the Council to have a better appreciation of the complexity and to let it know what steps would be taken to make sure that in the event of a major emergency, the City is in a position to respond and effectively communicate with other agencies.

Council Member Tate indicated that at yesterday's Emergency Planning Council meeting, the Council approved grant funding that would pay for approximately 60% of this system.

## **CITY ATTORNEY'S REPORT**

City Manager Leichter stated that she did not have a report to present this evening.

## **OTHER REPORTS**

## **PUBLIC COMMENT**

Council Member Tate indicated that the City has established a community committee entitled Youth Empowered for Success (YES). He said that this is a committee that is trying to carry forward the objectives of empowering youths to succeed by giving them assets, ones that will allow youth to learn better, have them respect the community and the community to respect them in return. He said that the committee is looking at implementing various items to communicate better between adults and youths to solve some of the problems raised by youth. He indicated that the committee spent a great deal of time last year going out to the schools and talking to various youths to find out what things need be done. The committee would like to start implementing some of the suggestions received. He stated that the committee needs youth to become involved with the committee to discuss ideas and to make them a part of the structure of the committee. He indicated that the committee meets on the second and fourth Tuesdays of every month at 4:00 p.m. in the Villas Conference room.

Mayor Kennedy presented Dennis Pinion with a Certificate of Appreciation for his years of serve to the City and the community as a Planning Commissioner and Mobile Home Rent Commissioner. He indicated that whenever there is a need for assistance, Mr. Pinion was available to help out.

Mayor Kennedy indicated that day workers congregate on Main Avenue, near the railroad tracks and downtown Morgan Hill. He said that a committee of volunteers and Council members are actively working to help address some of the issues and concerns that day workers face. He stated that many groups, churches and volunteers in the community are working toward building a dignified facility for day workers to attain employment. He stated that Council Member Chang is the working chairperson and that he is co-chairing this work with her. He indicated that a fundraising event will be held on October 12 at St. Catherine's parish hall. He encouraged members of the community to help in this effort.

Mayor Kennedy addressed the fire fighters who professionally handled the Croy fire. He read a draft thank you letter that he proposes to send to the many different agencies who responded to the Croy fire. He requested that each council member sign the letter.

Robert Benich addressed Goal 12H of the General Plan Policy document adopted in July 2001 which reads: "Encourage installation of public art in new and renovated non residential projects." He said that if RDA funds are going to be used for the Morgan Hill aquatics center, it was his belief that it was incumbent of the Council to budget for a public art project as part of this community facility. He recommended that the Council allocate a portion of each building fund to be used for the corresponding public art associated with all new public projects. He further requested that the Council advise the Santa Clara County Board of Supervisors that some form of public art should be a part of the new Morgan Hill-County Courthouse. He felt that art and architecture go hand in hand and that the integration of a building's design and structure with works of arts could benefit the entire community and provide enjoyment and inspiration for both residents and visitors. He felt that the time has come to appoint a Morgan Hill Art Commission whose responsibilities would be as follows: 1) establish a criteria for art to be associated with each new community facility according to the particular building or buildings to be constructed; 2) solicit bids from prospective artist according to guidelines of subject matter, fixed costs, proposed schedule and completion date for



the project, including final installation; and 3) review proposals from artists and forward recommendation to the City Council for its final review and approval. He felt that the Commission should be composed of members of city government, professionals in various fields of art, educators and members of the public. He requested that the Council move forward with due diligence and implement goal 12H of the General Plan.

Council Member Sellers indicated that he would be requesting that public arts be agendaized for a future Council meeting.

No further comments were offered.

## ***City Council Action***

### **CONSENT CALENDAR:**

Mayor Kennedy requested that item 3 and 5 be removed from the Consent Calendar.

**Action:**        *On a motion by Council Member Tate and seconded by Council Member Chang, the City Council, on a 4-0 vote with Mayor Pro Tempore Carr absent, approved consent calendar items 1, 2 and 4 as follows:*

1.        **WAIVE READING OF ORDINANCE NO. 1584, NEW SERIES**

**Action:** ***Approved** and **Waived** the Reading of Ordinance No. 1584, New Series and Declare that Said Title, which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived. Title as follows: An Ordinance of the City Council of the City of Morgan Hill Amending Section 17.50.094 (Imposition of Development Fees) of Chapter 17.50 (Vesting Tentative Maps) of Title 17 (Subdivisions) of the Municipal Code of the City of Morgan Hill Regarding Payment of Development Impact Fees.*

2.        **PROCLAMATION FOR LAWSUIT ABUSE AWARENESS WEEK**

**Action:** ***Approved** Proclamation Proclaiming September 20 - October 2, 2002 as Lawsuit Abuse Awareness Week.*

4.        **APPROVE PURCHASE ORDERS FOR THE FURNISHINGS, FIXTURES AND EQUIPMENT (FF&E) AT THE COMMUNITY AND CULTURAL CENTER**

**Actions:** *1) **Authorized** the City Manager to Approve a Purchase Order in the Amount of \$340,044 with Office Products and Interiors (OPI) for Furnishings, Fixtures and Equipment (FF&E) at the Community & Cultural Center; and 2) **Authorized** the City Manager to Approve a Purchase Order in the Amount of \$26,477 with Ceitronics for Voice and Data Cabling at the Community & Cultural Center.*

3.        **MURPHY AVENUE CORRIDOR STUDY – AMENDMENT OF SCOPE OF WORK AND BUDGET**

Mayor Kennedy noted that the Council discussed the inclusion of traffic calming as part of the

Murphy Avenue Corridor study.

City Manager Tewes informed the Council that the City is under a separate contract for a traffic calming study which has two aims in mind: 1) to give the City a general strategy for how traffic calming devices and techniques might be used in the community; and 2) to look at the traffic calming issues in Jackson Oaks. He said that the Murphy Corridor study is a planning study that would determine how the City can best meet the General Plan's goals of accommodating a significant increase of traffic in a corridor that is constrained by existing land uses and other factors.

Mayor Kennedy referred to page 14, paragraph 2 of the Fehr and Peers' scope of work that reads: "Fehr and Peers will prepare a conceptual design of the Condit/St. Louis roadway connection using a design speed such as the 40 miles per hour design speed which would equate to a 35 mph posted speed limit." He expressed concern with the proposed speed limit in a residential area. He inquired if the speed limit would be left open ended or whether the City has to establish a design speed?

Director of Community Development Bischoff indicated that Condit Road is not located in a residential area and that there are industrial or commercial land uses on either side of the area being studied. He indicated that the existing residential homes are non conforming uses. He said that one of the things that the City is looking at with this study is alternative means of moving the traffic volumes in a north/south manner, parallel to Highway 101, on the east side. The alternative being looked at suggests that Condit Road becomes a four-lane arterial as an alternative to meet this design speed.

Mayor Kennedy noted that the City has a new north/south arterial in Butterfield Boulevard and that it is designed for a higher speed of traffic. If the City has high speed arterials going through the community, they tend to bisect neighborhoods and communities. He requested that staff consider this concern as the City reviews the report.

Mr. Bischoff informed the Council that staff has a meeting scheduled with the consultant and the representatives from public works on Monday and that techniques that would address Mayor Kennedy's concern would be reviewed.

**Action:**      *On a motion by Council Member Sellers and seconded by Council Member Tate, the City Council, on a 4-0 vote with Mayor Pro Tempore Carr absent, **Authorized** the City Manager to Amend the Consultant Services Agreement with Fehr and Peers Associates, for the Murphy Avenue Corridor Study, to Incorporate a Revised Scope of Work and Budget Increase of \$36,540, Subject to City Attorney Approval.*

### **CONSENT CALENDAR:**

Council Member Chang and Sellers indicated that they both need to recuse themselves from agenda item 5. As Mayor Pro Tempore Carr was absent, the Council invoked the "Rule of Necessity." On the flip of a coin, Council Member Chang would be participating with regard to agenda item 5. Council Member Sellers recused himself from agenda item 5.

**Action:** *On a motion by Council Member Tate and seconded by Mayor Kennedy, the City Council, on a 3-0 vote with Council Member Sellers recusing himself and Mayor Pro Tempore Carr absent, **approved** Consent Calendar item 5 as follows:*

5. **ACCEPTANCE OF MONTEREY/KEYSTONE SEWER AND WATER REPLACEMENT PROJECT**

**Actions:** 1) **Accepted** as Complete the Monterey/Keystone Sewer and Water Replacement Project in the Final Amount of \$292,715.21; and 2) **Directed** the City Clerk to File the Notice of Completion with the County Recorder's Office.

## ***Redevelopment Agency Action***

### **CONSENT CALENDAR:**

**Action:** *On a motion by Agency Member Tate and seconded by Vice-chairperson Chang, the Agency Board, on a 4-0 vote with Agency Member Carr absent, **Approved** Consent Calendar item 6 as follows:*

6. **APPROVAL OF MORGAN HILL UNIFIED SCHOOL DISTRICT (MHUSD) REQUEST TO USE A PORTION OF BUTTERFIELD CHANNEL FOR STORM DRAINAGE RETENTION FROM EL TORO SCHOOL**

**Action:** **Approved** Request and **Authorized** the Executive Director to Execute Letter Transferring Storm Drain Retention Capacity in Butterfield Channel.

## ***City Council and Redevelopment Agency Action***

### **CONSENT CALENDAR:**

**Action:** *On a motion by Council/Agency Member Tate and seconded by Council Member/Vice-chairperson Chang, the City Council/Agency Board, on a 4-0 vote with Mayor Pro Tempore/Agency Member Carr absent, **Approved** Consent Calendar items 7-9 as follows:*

7. **CARRYOVER OF ENCUMBRANCES**

**Action:** **Accepted** and **Filed** Report.

8. **RE-BUDGETING CARRYOVER 2001/02 PROJECTS**

***Action:** Approved the Budget Scorecard Forms Re-budgeting 2001/02 Project Costs in the 2002/03 Fiscal Year.*

9. **SPECIAL AND REGULAR CITY COUNCIL AND SPECIAL REDEVELOPMENT AGENCY MEETING MINUTES OF SEPTEMBER 18, 2002**

***Action:** Approved the minutes as submitted.*

## ***City Council Action***

### **OTHER BUSINESS:**

10. **URBAN LIMIT LINE (GREENBELT) STUDY WORK PROGRAM**

Director of Community Development Bischoff presented the staff report and informed the Council that the scope of work for the urban limit line would involve staff working with a consultant and a citizen advisory committee to look at land uses and try to identify long term (40-50 years) of land use needs. Working with the consultant, staff would identify sensitive areas that should be preserved for open space that would otherwise be problematic to develop. Staff would also be looking at environmental review. He noted that there were a number of policies in the General Plan that request that the City look at very specific areas or issues in conjunction with the greenbelt study. One of these policies has to do with the area located east of the freeway, south of Tennant Avenue, looking at the area for its viability for industrial use. In addition, staff will be looking at the property just west of Community Park. He informed the Council that County staff has reviewed the work plan and has worked closely with staff toward its development. Staff has discussed the work plan with Santa Clara County Board of Supervisor Gage who is supportive of it. He requested that the Council authorize staff to initiate a consultant selection process for this project and to approve the scope of work. He said that based upon input by the Council this evening or from other groups later, the scope of work could be modified.

Council Member Tate referred to page 133 (page 3 of the report) that states "assessment of future land use needs." He noted that the City completed a General Plan update and that the Council fixed what the urban needs would be for commercial and industrial and that upon completion of urban needs, the City would conduct a greenbelt study. He felt that it is being implied that the City review its urban needs again and incorporate it into the greenbelt study. He inquired why urban needs are being reviewed again?

Mr. Bischoff responded that areas in the City's urban growth boundary define the lands that the City would need for development over the next 20 years. He said that it was his understanding that the City would talk about a permanent boundary beyond which the City would grow. It is staff's understanding that this would occur sometime and that the City would need to ensure that it has land available, sufficient to grow over a period of time beyond 2020. He stated that the City would be able to define the greenbelt anywhere outside the urban growth boundary. Staff felt that the City should look longer into the future to try to determine what the future needs would be in order to provide for additional growth of the City.

Council Member Tate felt that the study would be similar to performing another General Plan

update.

Mr. Bischoff indicated that staff is not recommending that properties be designated for industrial or commercial uses, but rather determine an order of magnitude that between 2020 and 2050 the City needs an additional 3,000 acres of area for development. He stated that the City could look at environmental constraints where growth would best occur and then plan for an additional 3,000 acres.

Council Member Tate expressed concern that the Council would be defining a greenbelt and that at the next general plan update, the City would be limited because a greenbelt is in place.

Mayor Kennedy noted that the City of San Jose city limits abuts Morgan Hill's city limits. He further noted that the City of San Jose has established a greenbelt and that City staff has worked with them on the Coyote Greenbelt plan. He felt that the City has a basis of an agreement. He inquired if there were any documents of understanding in place that would provide some certainty that this space does not get developed? He felt that the City needs to ensure that staff works with the San Martin Planning Advisory Committee, the City of San Jose and Santa Clara County so that the greenbelt adopted by the City works together with theirs. He recommended that the City place mechanisms in place that would provide a long term certainty that the greenbelt areas to remain greenbelts such as using Open Space Authority funds. He felt that these funds can be earmarked for such things as acquiring open space land or acquiring agricultural conservation easements. He wanted to make sure that all of these issues are part of the study.

Mr. Bischoff indicated that it was staff's intent to have a technical advisory committee assisting staff with the greenbelt study. He said that staff would be working closely with County staff, noting that San Martin is governed by the County. Therefore, staff would propose that it work with the County and whatever processes they feel are appropriate. If the County feels that it is appropriate to consult with the San Martin Planning group, staff would do so. With respect to the City of San Jose, he indicated that the City requested participation on the Policy Committee for the Coyote Valley planning initiative being undertaken. The City of San Jose indicated that they thought it would be best for the City to participate at a technical level and that it was staff's intent to become actively involved in this effort.

Mayor Kennedy said that there seems to be some division of opinion between the local San Martin Planning Advisory Committee and some of the Santa Clara County policy makers. He requested that the City reach out to the San Martin Planning Committee, if possible.

Council Member Sellers felt that it made sense to incorporate the San Martin Planning Advisory Committee and that staff employ the Council, if necessary. He felt that in the next 50 years, San Martin would be incorporated. Should this be the case, the City would end up in a situation where it wants to establish a precedent. He encouraged staff to work with the San Martin Advisory Committee.

Mayor Kennedy requested that the Citizen Advisory Committee include residents from surrounding communities.

Mayor Kennedy opened this item to public comment. No comments were offered.

**Action:**      *On a motion by Council Member Sellers and seconded by Council Member Tate, the City Council, on a 4-0 vote with Mayor Pro Tempore Carr absent, **Authorized** the City Manager to Initiate the Consultant Selection Process for Undertaking an Urban Limit Line (Greenbelt) Study Consistent with the Work Program.*

## ***Redevelopment Agency Action***

### **OTHER BUSINESS:**

#### **11. PRESENTATION: AQUATICS COMPLEX MASTER PLAN, SCHEDULE, PHASING PROPOSAL AND SUB-COMMITTEE APPROVAL**

Recreation and Community Services Manager Spier presented the staff report on the aquatics complex master plan. She indicated that David Petta with ELS was in attendance to present the Council with an overview of the issues associated with this project. She indicated that staff would like the Council to discuss the master plan concept and approve one of the concepts being presented. Staff would also like to discuss the schedule of the completion. She requested that the Council select a Council design subcommittee similar to the success of the Library design subcommittee who were able to move the design along on a consistent basis.

David Petta, ELS, addressed how the aquatics facility would satisfy the competitive and recreational programs. He displayed aquatics facilities designed by ELS located in San Luis Obispo (Cal Poly), Pleasanton, Stanford and Berkeley. He indicated that sun, shade, and wind are key issues to an aquatics facility. He addressed energy saving features that are proposed to be incorporated in the aquatics center. He indicated that he would work with staff to look at all circulation routes as well as visibility to the site, noting that hotels and parcels shield the site somewhat. He indicated that the community workshop held approximately three weeks ago, it became apparent that connection to the sports complex is one of the key features of the facility. He was originally concerned with noise from the freeway but felt that it was less of concern as he visited the site and became familiar with it. He said that there is an issue about noise to the surrounding residences and that there may be an issue of noise from the facility toward the hotels. Therefore, acoustic of the site would need to be taken into consideration. He said that there are prevailing winds from the northwest and that the City would need to deal with the wind to make the facility truly useable for all activities. He said that close attention should be given with regards to acoustic, lighting, circulation and parking needs.

Mr. Petta indicated that he developed two concepts based on the input received at the community workshop and identified the key features for each design. He said that the idea that seemed to work best is to place the clubhouse building in a location where it can serve both the fields and the pools and that access be from Barrett Avenue. He identified phasing lines for the aquatics center. He indicated that the alternate scheme works similarly and that it rotates the pool slightly. He indicated that the permanent bleachers located at the competitive pool area face, the north in order to avoid glare and looking at the sun.

Ms. Spier informed the Council that scheme 2 is the preferred scheme for the architect and staff.

She said that in previous discussions, two key points were identified: 1) it was vital for the clubhouse to serve the sports complex site as well as the aquatics site and 2) that Barrett Avenue be closed. She informed the Council that ELS is suggesting that a wind study be performed. Staff would need to look at how a wind study would impact the schedule and how it would impact the fees. She indicated that two concepts were derived from general discussion and the use of the eight acres that includes a future expansion. She informed the Council that the size of the clubhouse was discussed at being 15,000 square feet at final build out. It is proposed that construction be divided with a portion of the clubhouse being built in the first phase and that the second portion be the team locker room that supports the competitive side.

Mr. Petta informed the Council that citizens supported scheme 1 at the Taste of Morgan Hill. He indicated that his preference was for scheme 2 as it separates nicely into a recreation facility and a competitive facility from different ends as opposed to scheme 1 which brings both the competitive and recreational components to the clubhouse. In scheme 1, the second pool which may be used by small children, is somewhat remote from the clubhouse. Additionally, you have the competitive pool no co mingling of uses. He said that any windscreen would be difficult to shelter the pool and that you would have bleachers facing east and west, where people would be looking into the sun. The sun would be reflecting off the water, making it difficult to see swimmers because of the glare in the water. Scheme 2 has spectators looking north in the permanent bleachers. He said that both schemes have the option of placing temporary bleachers in the center to create a stadium effect. This may mean that during the course of the year, you may have a wide-open space in the middle of the facility, trading this off with a scheme that would have all of the seating at the perimeter and tightening up the pools. He felt that both schemes divide nicely into phase 2.

Chairman Kennedy stated that an objection he had to scheme 1 is that the bleachers block the views of the pool from Condit Road and from the entrance. What an individual would see is the back of the bleachers and not the waterslide, water features, or individuals having a fun time.

Mr. Petta suggested that the Agency's approval be broad enough as there is still a lot to learn about the site. It is his hope that the Agency does not tie down one scheme over the other because both schemes are compatible. As more is learned, he felt that they may blend together in such a way that cannot be foreseen this evening.

Chairman Kennedy opened the floor to public comment.

Robert Benich stated that he was pleased that ESL architects, in their statement, have specifically stated that conservation of resources and protection of the environment through effective planning and design of public facilities are goals as well as the design of a financially self sufficient community facility. He was also pleased to see, in the presentation, that ELS is proposing to use some type of energy conservation method in the buildings. However, he did not see anything having to do with the solar heating of the swimming pools. He felt that this has a direct financial impact on the operation of the facility for years to come as well as environmentally friendly and not utilizing scarce resources. He recommended that the City proceed with a wind study, indicating that winds in Morgan Hill are experienced in the afternoon. Therefore, it is an afternoon wind factor that needs to be addressed.

Martin Kapetanovic extended her appreciation to staff for the wonderful job they did at the Taste of Morgan Hill. Staff allowed her to be a part of the aquatics center display as members of the Aquatics Foundation Inc. She indicated that she explained the design to individuals as best that she could. She stated that she preferred scheme 1 because the location of the recreational pool with the green area would be a better vision for parents to see both pools versus to look through one pool to see the other pool. She indicated that the fundraising bricks were in display at the Taste of Morgan Hill and that over 250 applications for the fundraising program were handed out. She stated that individuals were excited about the fundraising concept and that she is hoping to receive all of the applications back with checks.

John Rick also thanked city staff and that he enjoyed working with staff at the Taste of Morgan Hill. He indicated that the smaller brick would raise \$125 and that the larger brick would raise \$250, and an additional \$100 for a custom logo.

Chairman Kennedy indicated that the Agency requested the architect include a location in the design where the bricks would be placed.

Josh Valdez addressed the diving platform and inquired whether the platform would be 100% platform or whether it would be designed using a spring board. He stated his preference for a spring board.

No further comments were offered.

Mr. Petta indicated that this project would be the most ambitious in terms of use of solar panels statewide for swimming pool projects. He agreed that winds are worse in the afternoon and that he has submitted two consultants names who can study the wind. He indicated that a consultant from El Cerritos has conducted several wind studies, one of which was the Shoreline Amphitheater which needed a big area free of wind. He stated that he could squeeze the facility slightly to the south and that one benefit of this would be to allow Barrett Avenue to be closed or to reopen 3-5 years from now, if necessary. He said that this project could be uncoupled from problems that may be inherent in closing Barrett Avenue because there is enough space on site to do so. He said that there would be green space immediately adjacent to both pools and that green can be introduced in the middle of the pool areas. Also, there will be plenty of diving opportunities of all kinds.

Chairman Kennedy indicated that he would like to include public art in this project.

Mr. Petta said that are other opportunities to include public art and that art could be tied to into the energy savings aspect. Public art could also be tied to the issue of wind, sun or shade. If the City is saving a place for art, he recommended that a percentage of funds be set aside or so that it does not get used for other things. The City could also fund art by alternative means. He indicated that art can be a useable element or a decorative element. He needs to know how much art is to be included in the schematic design.

Chairman Kennedy said that it is his belief that the Agency would support some expenditure for art whether it is handled by contributions or part of the budget for this project.



Agency Member Tate agreed that art needs to be incorporated in the budget, noting that Agency Member Sellers has requested that this issue be agendaized for discussion. It was his belief that the Agency needs to have the discussion of the two different approaches to fund public art.

Vice-chairperson Chang stated that she expected the architect to return with an artistic design. If the building is beautifully designed, it may be a work of art itself.

Agency Member Tate stated that he was comfortable with Mr. Petta's comments regarding the pros and cons for the two schemes. He was convinced that Mr. Petta would move forward based on comments expressed this evening. He did not know if the Agency needs to give too much direction on scheme 1 versus scheme 2. He indicated that he would like to give direction on the schedule.

Agency Member Sellers agreed that significant latitude needs to be given in merging the design. He expressed concern with the wind as there are certain times of the year that winds become significant through this area. He was pleased to hear that the wind would be addressed, even if it incorporates angling buildings or some other design alternative. He concurred that as a parent, your first concern is where you can sit in order to see children swimming. He wanted to make sure that the design takes into account that parents need to see their children using different pools. He inquired what was being done to limit access to the lap pool and the competitive pool in order to prevent accidents. He said that the Agency has had the opportunity to visit other recreational centers and recommended that Mr. Petta integrate art to some degree such as designing a wall that might have a playful look instead of being a flat wall. He stated that the Agency would find ways to incorporate art opportunities. He said that many elements used by children are artistic elements such as water slides, overhead buckets, and colors and that these should be part of the art.

Mr. Petta said that if a barrier is installed, it could be one that could be open on some days and closed on other days to create a solid barrier to prevent cross use of pools and to protect both uses from accidents. He felt that it would be better to have a policy on art and stick to it.

Vice-chairperson Chang inquired how many months out of the year would the pools be fully utilized when they are outside pools and not heated? Mr. Petta responded that the recreational pool would be used approximately from Memorial Day to Labor Day. He noted that the City has engaged the Sports Management Group to help staff with the business aspect of the facility. This group would be able to pin point the months of use together with fee schedules and rates to be expected. He indicated that the recreational pool would be heated.

Ms. Spier said that it is staff's assumption today that the recreational leisure pool would be open from May to September and that the 50-meter pool would be open year round, consistent with the Haroldson study and the financial analysis. She indicated that solar heating was not part of the study and that incorporation of solar heating should help the financial aspect in the long run.

Chairman Kennedy agreed that the City needs to leave flexibility open on both schemes 1 and 2. As Mr. Petta proceeds with the schematic design, he stated that he would favor scheme 2 as long as there is adequate green space for families to get around the recreational pool. He felt that it was important to see the pool from Condit Road and the hotel areas versus the backside of a grandstand.

Ms. Spier clarified that staff did not provide the public with the pros and cons associated with each scheme at the Taste of Morgan Hill. She indicated that enough information was not received from the public about the design and that staff did not understand why the public preferred scheme 1.

Ms. Spier stated that staff is very conscious of the schedule and how important it is to the community. Staff understands that it is the Aquatics Foundation, Inc.'s goal to have the aquatics center open in 2004. In order to have a grand opening in July 2002, staff needs buy in from the City Council, all boards, commissioners, and committees as well as staff. She indicated that a comfortable grand opening day would be April 2005. This timeframe would provide the City with plenty of review time, opportunity for discussion, value engineering and review of a construction document, pulling the community in at one point of the process. April 2005 would allow the City to get staff on board, and train the lifeguards and facility operator and allow for a soft opening of the center with a grand opening to be held in May 2005. To back the schedule to July 2004 would require a lot of buy in. She indicated that she met with the Agency subcommittee members Chairperson Kennedy and Agency Member Carr to discuss the schedule. She said that in order to meet the July 2004 schedule, staff would have to start work on the Negative Declaration for this project. She indicated that staff is currently speaking with a consultant to bring someone on board to start the environmental review of the project and that staff is writing the project description. Staff needs to have the environmental analysis completed by November 18 and that the Council has to meet on December 18 to approve the Environmental Impact Report (EIR). Another critical milestone to this project is the LAFCO process, indicating that this process would be coordinated with the EIR in order to take the project to LAFCO in February or April 2003. She said that there are trade offs to the schedule. She said that decisions about public art need to be made quickly. If the Agency is considering adding items to the project, the timeframe for additions would be the next 30 days or the art would have to wait. If the schedule is compressed to a 2004 target, staff would need to start the process immediately, limiting the number of community workshops. Staff would need authorization for loan documents. She stated that decisions would be made based on assumptions. Staff would recommend a combination of community workshops with regular scheduled Parks & Recreation Commission meetings and Architectural Review Board meetings, maybe combining these two meetings in order to keep the schedule going. Staff would need authorization to proceed with the design documents prior to the completion of the EIR. There is also the chance that staff would not be able to conduct value engineering and that solar heating may be another aspect of the project that cost may be a factor. She indicated that there are risks associated to expediting the project. She said that it would take 12 months to construct the project with a minimum of five months to design the project with limited input. A 2004 schedule can be done with a certain amount of risks involved to move the project forward.

Chairman Kennedy indicated that he and Agency Member Carr met to discuss the schedule with the consultant last week and met with Ms. Spier and Mr. Petta today regarding the schedule. He indicated that the community wants this facility built as quickly as possible. However, the Agency recognizes that it has to perform its due diligence and make sure that mistakes are not made. In review of the schedule, there were several issues that came up, one being that there was not adequate time for internal review of the design drawings before they went out to bid. This would result in the addition of a couple of weeks to complete the internal review. He stated that there may be other areas where the City may be able to save time. He recommended that the Agency appoint an Agency subcommittee who would work directly with the architect as was done with the Library

subcommittee. He would recommend that he and Agency Member Carr continue on this committee and that they work directly with the architect in order to keep the project moving forward. He noted that staff has allowed five weeks for the plan check process that is typical of a construction project. He said that private sector engineers and contractors pay to bring on board outside consulting plan checkers to help speed up this process. He recommended that the City hire an outside plan checker to speed up the plan check review. This action could save the City 2-3 weeks and would offset the additional three weeks for design review. He felt that there were other areas in the schedule where the City might be able to save time early on. Instead of having dedicated public workshops, the City can use the Parks and Recreation Commission as one of the public workshops and use the ARB meeting as another opportunity for public input. He noted that there would be presentations to the Council/Agency all through the process.

Mayor Kennedy stated that it would be ideal to have the facility open and running by Memorial Day weekend 2004. He said that he would like to give this aggressive schedule challenge to city staff. He would like to see construction completed 5-6 weeks earlier than currently planned. He noted that there is a 10-month construction time schedule based on input from contractors. As the Council/Agency gets into more detail, there may be ways to bring the facility on line earlier. Bringing the facility on line earlier would cut down on operating costs because the facility would be on line earlier in the season generating revenue from the recreational pool. He recommended that the Agency give staff and the consultant a target goal of bringing the facility on line by Memorial Day 2004.

Chairman Kennedy said that if you look at the schedule, construction does not start until July 2003. He felt that the City was missing a lot of the summer construction window and that this may cause some additional delays. He recommended that the construction start day be moved up earlier in the dry season. He further recommended that a fast track schedule be utilized where the excavation, foundation, underground work, and site work are bid out separately. He acknowledged that there may be some problems in doing so because there are generally two different contractors performing the excavation for the pool and excavations for other site work. He recommended that the Agency request that staff and the consultant take a look at the schedule with the goal of bringing the operation to Memorial Day 2004.

Agency Member Tate stated that by committing to a Memorial Day 2004 opening, the Council/Agency would be setting an unrealistic expectation with the public who want the facility opened immediately. However, to set this date as an expectation given everything that has been presented, he has learned that public facilities are built later and would take longer to be built than expected. This would result in increased costs. He stated his support of a grand opening of Memorial Day 2004 but that the City not set an expectation to the public that this can be done as this is an unrealistic schedule. He noted that staff pointed out that the Council/Agency would not have an opportunity to perform value engineering work. He noted that there were several delays with the community center and that the Council/Agency indicated that they would fix these problems with future projects. He felt that fast tracking the project would result in risks to the City. He recommended that a completion date be identified that is doable, noting that staff has indicated that a realistic time schedule would be April 2005. He recommended that this date be given as project completion expectation and that the City reward itself if the project is completed at an earlier date.

Chairman Kennedy felt that value engineering should be done as part of the design process and not as a separate step. With respect to the expectation raised by Agency Member Tate, it was his belief that the Council/Agency should give staff and the consultant an aggressive target date and see if it can be done. Staff and the consultant can return with a proposal and that the Council/Agency can determine whether this is an acceptable risk to take. He noted that this is a preliminary schedule and felt that there was additional flushing out of the schedule to be conducted. He recommended that the Council/Agency ask staff and the consultant to take a closer look at the schedule to see if there is a way to bring the project in by his recommended target date.

Vice-chairperson Chang stated that she would be pleased if the project was completed by November 2004.

Agency Member Sellers appreciated Chairman Kennedy's effort and felt that it would make everyone work harder. He said that the Council/Agency learned a lot of lessons from the Community Center project, one being that the City cannot anticipate a lot of things at this point. He felt that the City needs to account for these as they come up. Also, the Council/Agency needs to understand its limited ability to digest too much information at any one time. He would like to make sure that the Council/Agency do both as the project proceeds. He said that this project is a more straightforward project than the community center and does not have the varied elements. Also, the Council/Agency's experience has enabled it to make the significant and right decisions. He felt that the Council/Agency can do this but that it has to be prepared to do so. He acknowledged that the City may not have the public input that it might have had this been a stand-alone project. He noted that the City received significant input with the Visioning process and received other input in other venues such as the Taste of Morgan Hill or from the aquatics group itself. He did not believe that anyone interested in the project would be concerned that only one or two public sessions would be held as long as they are provided with the ability to provide input.

Agency Member Sellers said that he would agree to spending additional funds to retain the services of an outside plan checker. He said that it was important to him that the integrity of the project comes before the schedule. He felt that the Agency needs to be prepared to deal with the issues that come up. He would agree to do whatever it takes to meet the aggressive schedule but that as the City proceeds that it is not setting unreasonable expectations on this project. If the project is opened in July, he felt that it would be incumbent upon the Agency to find the operational funds to make up for the lost revenues that may occur. Should delay occur, the Council/Agency would need to determine how it would come up with operational funds and integrate them into next year's budget.

Chairman Kennedy felt that if the project could open two to three weeks sooner, the revenue to be generated would pay for the cost of the outside plan checker.

Executive Director Tewes noted that the Agency has given staff goals for the public facilities to ensure that three things are accomplished at the same time: 1) bring projects on schedule, 2) at budget, and 3) meet the program objectives. If the Agency votes to challenge staff to the more aggressive schedule identified by Chairman Kennedy, he wanted the Agency to be aware that the July 2004 schedule is the biggest challenge staff has set for itself on a public facility. He said that it would be helpful if the Council/Agency took formal action to identify this project as the number one priority so that staff can advise the ARB, Parks and Recreation Commission, staff and other

applicants that may have to stand in line that this project comes first. He felt that this public statement would be important for the City to have a fighting chance of meeting this aggressive schedule.

Agency Member Tate noted that the City has other on going projects taking place along with this project that would impact the schedule from a manpower deployment stand point. He stated that this is not the number one project to him, noting that the City is hoping to build a library. He stated that he was not willing to commit to any schedule other than the schedule that staff is comfortable with. He said that all the reasons he has heard this evening leads him to set April 2005 as the expected completion date, one that the City plans to beat as much as possible.

Chairman Kennedy indicated that he spoke with Agency Member Carr today who expressed that it would be his goal to speed up the schedule as much as possible/reasonable.

Vice-chairperson Chang stated that she did not realize that the schedule was becoming an issue. She noted that the City does not know if it has funding for the library and that this project is ready to proceed. She supported the July 2004 target schedule as long the integrity of the project is not jeopardized. She would support an Agency subcommittee working with staff and the consultant to make this happen at no additional cost to the City.

Agency Member Tate did not believe that the 2004 was a realistic schedule.

Chairman Kennedy noted that staff pointed out that there are some risks associated with the July 2004 schedule. The question was whether these were acceptable risks. In his discussions with Agency Member Carr today, he used the term "acceptable risks." He felt that there were acceptable risks to take. He agreed that this project is not like the community center project as pools like this are built all the time and that the cultural center included innovative and creative ideas that were designed into the facility. He noted that this is not the case with this project.

Vice-chairwoman Chang stated that she would agree to make this project as the first priority as no other projects are in the works at this time. She noted that this is a \$4-5 million project that has been funded. If the subcommittee is stating that this is workable, she would be willing to make this project her first priority.

Agency Member Sellers stated that he would agree to make this project a top priority even if it means that a house would be constructed a month later than it would otherwise. If it means that the ARB and the Planning Commission have to meet an extra time or meet on an off day to get the work done, he would like to send out the message that this is the Council/Agency's intent. He requested that staff be straight forward with the Council/Agency and indicate that the integrity of the project would not allow completion by summer 2004. He recommended that citizens be advised that the aquatics center would be open in April 2005 but that the City is doing everything that it can to open the facility in the summer of 2004. He would support stating publicly that this is the top priority project and that he did not believe that it would impinge on other projects coming up. If it turns out that the City gets funding for the library, the Council may need to revisit priorities. He felt that it was correct for the City to proceed under the schedule but that the Council/Agency needs to be prepared to make changes as the project moves forward. He concurred with selecting Agency

Member Carr and Chairman Kennedy to serve on the design subcommittee but that want to make sure that the Agency, as a whole, is signing off on some of the preliminary design phases. He would like the Agency unified in the design that is best for the aquatics center.

Chairman Kennedy stated that it would be the intent of the Agency subcommittee to have a unified consensus on the design. He proposed that the subcommittee go to the architects place of business in order to have working meetings to keep the project moving.

Ms. Spier noted that the ELS is under contract to design phase 1. If ELS was to enter into contract tomorrow for phases 1-3, the cost would be \$1.2 million for the projection construction cost for a \$13 million project. Should staff need to negotiate a portion of the contract with ELS, the City would be looking at a delay. In response to Agency Member Sellers question, she said that there would be no benefits in designing phases II and III with the exception of cost savings in design.

Chairman Kennedy said that one of the issues raised by the Aquatic Center Foundation was to have an idea of what the additional phases would cost so that they can raise money for these phases. It is their hope to raise additional funds for design phases II and III. It was indicated that the current contract amount is approximately \$700,000 for phase I.

Agency Member Sellers felt that it would be helpful to know what it would cost to design phases II and III. Should money be made from this project, he felt that there may be some consideration at a future Agency meeting to put some of the revenues toward subsequent phases.

Chairman Kennedy stated that should the Aquatics Center Foundation raise sufficient funds to proceed with phases II and III, he inquired what would be included with these phases?

Ms. Spier indicated that Phase II includes the rest of the pools and phase III would complete the amenities. She indicated that staff would need to prepare a feasibility study and go back and look at the numbers as there was not a lot of cost recovery. It would take the recreation pool to cover the cost of the competition site unless the Aquatics Foundation is successful in some of their fundraising efforts. She indicated that the design costs for phases II and III would be approximately \$380,000 and \$300,000 and that construction costs would be significant above these amounts.

Executive Director Tewes indicated that staff recognizes that the City has many priorities and that it has customers who have expectations as well. It would not be staff's intent to create problems where none need be created. However, there will be occasions in which something has to give. He said that the priority direction from the Agency would be helpful to staff.

Vice-chairwoman Chang said that if staff is talking about the indoor community center or the library, she said that this is the number one public project and that other projects have to wait. She stated that she has confidence in staff in their ability to hire additional staff within cost, to manage the project to the point that the public is not interfered with too much.

Agency Member Sellers said that the priority status of this project will be a challenge when complaints are received and apologies are given based on the Council/Agency policy decision. He did not believe that it would be fair to staff unless the Council/Agency is willing to share some of

the burden on its policy decision.

Chairman Kennedy felt that next to the community and cultural center, this would be the City's next highest priority project.

**Action:** *On a motion by Vice-chairwoman Chang, seconded by Agency Member Sellers, the Agency, on a 3-1 vote with Agency Member Tate voting no and Agency Member Carr absent, **adopted** the aggressive July 2004 schedule, making this the number 1 priority project.*

**Action:** *Agency Member Sellers made a motion, seconded by Agency Member Sellers to appoint Chairman Kennedy and Agency Member Carr to the design subcommittee. The motion carried 4-0 with Agency Member Carr absent.*

#### **FUTURE COUNCIL-INITIATED AGENDA ITEMS:**

Council Member Sellers requested that staff schedule a broader discussion on the City Council's approach to public arts funding (General Plan Goal 12 H) within the next few months.

Council Member Chang inquired when the Council would be conducting a workshop on its goals? City Manager Tewes indicated that the Council typically conducts its goal setting workshops in January but that a specific date has not been set.

Council Member Chang noted the closure of the San Jose Medical Group, making the medical service issue even more critical. She requested that the City Manager report back on medical services.

City Manager Tewes stated that the Morgan Hill Community Health Foundation is preparing a plan on how to achieve the Council's medical services objectives. He said that it is their expectation to present the plan to the Council in November.

Council Member Chang expressed concern that there is no urgent care facility in Morgan Hill and that doctors are leaving the community. She requested an update on the City's current medical situation.

#### **ADJOURN TO CLOSED SESSION**

Mayor/Chairman Kennedy opened the closed session to public comment. No comments being offered, he adjourned the meeting to closed session at 9:38 p.m.

#### **RECONVENE**

Mayor/Chairperson Kennedy reconvened the meeting at 10:25 p.m.

#### **CLOSED SESSION ANNOUNCEMENT**

Agency Counsel/City Attorney Leichter announced that no reportable action was taken on the above listed closed session items.

**ADJOURNMENT**

There being no further business, Mayor/Chairperson Kennedy adjourned the meeting at 10:26 p.m.

**MINUTES RECORDED AND PREPARED BY**

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**IRMA TORREZ, City Clerk/Agency Secretary**





**REDEVELOPMENT AGENCY  
STAFF REPORT  
MEETING DATE: October 16, 2002**

**TITLE:       ACCEPT DONATED UTILITY VEHICLE FOR THE  
              COMMUNITY AND CULTURAL CENTER**

**RECOMMENDED ACTIONS:**

1.       Accept the donation of an electric utility vehicle from Global Electric Motors for use at the Community and Cultural Center

**EXECUTIVE SUMMARY:** The purchase of a small utility vehicle, similar to the small “gator” vehicle used by the Public Works Department, was originally envisioned for the Community Center to move tables, chairs, and other bulky items about the campus on a weekly, if not daily basis. The cost of such a vehicle was estimated at about \$7,500. This item was deleted from the work program due to cost constraints.

The City has recently been notified by the California Recreation and Parks Society and the National Parks Service that it has been selected to receive an electric utility vehicle free of charge. This vehicle is produced by Global Electric Motors, a subsidiary of Daimler-Chrysler, and is being donated to the City as part of a state-wide vehicle donation program. This is a GEM 825 two seat, long utility bed electric vehicle which will be ideal for the Community Center purposes. The electric vehicle is valued at about \$3,000. Adding to the value and cost efficiency of this donation is the fact that the GEM 825 is recharged using standard 110 volt AC household current. As a result, no other special equipment or non-standard maintenance programs are required to keep the vehicle operational. A photo and description of the vehicle, along with the terms and conditions of the vehicle donation program are attached.

It is recommended that the Agency accept this donation.

**FISCAL IMPACT:** N/A

**Agenda Item # 27**

**Prepared By:**

\_\_\_\_\_  
**Recreation and  
Community Services  
Manager**

**Submitted By:**

\_\_\_\_\_  
**Executive Director**



## **REDEVELOPMENT AGENCY**

**MEETING DATE:** *October 16, 2002*

### **MORGAN HILL PLAZA RE-USE STRATEGY (CONLEY CONSULTING GROUP)**

**RECOMMENDED ACTION(S):** Authorize the Executive Director to execute a contract with Conley Consulting Group for the Morgan Hill Plaza Re-use Strategy, in an amount not to exceed \$46,220, conditioned upon the approval of Agency Special Counsel.

**EXECUTIVE SUMMARY:** Morgan Hill Plaza, located at the intersection of Monterey Road and Dunne Avenue, is currently anchored by Albertson's Supermarket. Over the last few years, Albertson's has made it known that it is looking for a freeway location to build a new larger store and abandon the current site. When Albertson's leaves it will detrimentally impact the viability of the shopping center especially if Albertson's does not allow another grocery store to occupy the site. The loss of Albertson's coupled with significant delay in filling the space would likely cause Morgan Hill Plaza to suffer from increased vacancies and economic malaise. The development of a re-use strategy will give the Agency a plan on how to avoid the situation that occurred about eight years ago when Safeway left Tennant Station Shopping Center and relocated to its Dunne/Highway 101 location. It will also help the Agency to better understand the viability for the existing eight-unit apartment building at 50W. Dunne Avenue, that is surrounded by the shopping center.

Staff issued a Request for Proposal for a Re-Use Strategy in June 2002. Six proposals were received and all firms were interviewed. Conley Consulting Group was selected because of its aggressive and comprehensive approach to the project (see attached Conley Consulting Group proposal). The Conley team includes Metrovation, a retail real estate specialist. The re-use strategy will advise the Agency on the best way to reposition the shopping center property. It will include an evaluation of the current retail climate in Morgan Hill and determine the shopping center's position within the larger market environment. The strategy will also include an assessment of the potential of the shopping center in its current configuration as well as an evaluation of three alternative re-use strategies. In Phase 1, alternatives will be identified, in Phase 2 the preferred alternative will be selected, and in Phase 3 an implementation plan will be developed. In addition to meetings with staff, Conley proposes several meetings with the property owners to gain their individual perspectives on the future of Morgan Hill Plaza and develop a re-use strategy that blends their interests with those of the City. Development of the re-use strategy will cost \$46,220 and take approximately 12 weeks.

**FISCAL IMPACT:** Sufficient funds for the re-use strategy have been budgeted in Fund 317 - Economic Development Programs.

Attachment

**Agenda Item # 28**

**Prepared By:**

**BAHS Manager**

**Approved By:**

**BAHS Director**

**Submitted By:**

**Executive Director**



## **CITY COUNCIL STAFF REPORT**

**MEETING DATE:** *October 16, 2002*

### **DEVELOPMENT AGREEMENT AMENDMENT DA 02-04: SUNNYSIDE-QUAIL CREEK**

#### **RECOMMENDED ACTION(S):**

1. Open/close Public Hearing
2. Waive the First and Second Reading of Ordinance
3. Introduce Ordinance

#### **EXECUTIVE SUMMARY:**

The applicant is requesting approval of a development agreement that will cover the development commitments for a 12-lot portion (phase 1B) of the 15.7-acre Quail Creek development located on the north east corner of the intersection of Sunnyside Ave. and Watsonville Rd.

On March 6, 2002, the City Council approved an RPD plan for the Quail Creek project. The project first received building allocations (FY 2002-03, 12 allocations & FY 2003-04, 6 allocations) in the 2000 MP competition. The applicant has already begun clearing the site for construction of Phase 1A, which consists of 20 single family homes on lot sizes ranging from 4,000-11,000 sq. ft. Phase 1A will be completed on the south side of the site, taking access from Watsonville Rd.

As of May 14, 2002, the Commission awarded another 12 allocations for FY 2003-04. The 12 allocations are defined as phase 1B, which will complete a cul-de-sac adjacent to phase 1 A.

In accordance with established City Council policy, all residential projects awarded building allotments through the Residential Development Control System must secure City Council approval of a Development Agreement. The purpose of this agreement is: to secure commitments made during the Residential Development Control System process, and to establish a development schedule and mechanism for monitoring project success. Special attention is directed to Paragraph 14 of the Agreement which addresses the developer commitments made during the 2001 Residential Development Control System process. Exhibit "B" of the agreement sets forth the due dates for actions prior to construction.

This application was reviewed by the Planning Commission at its September 10, 2002, meeting. The Commission voted 7-0, approving the request. The Planning Commission staff report and minutes are attached for the Council's reference.

**FISCAL IMPACT:** None. Filing fees were paid to the City to cover the cost of processing this application.

**Agenda Item # 29**

**Prepared By:**

**Senior Planner**

**Approved By:**

**Community  
Development Director**

**Submitted By:**

**City Manager**

**ORDINANCE NO. 1585, NEW SERIES**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF  
MORGAN HILL APPROVING OF A DEVELOPMENT  
AGREEMENT, DA-02-03:SUNNYSIDE-QUAIL CREEK  
FOR APPLICATION MP 01-11: SUNNYSIDE-SOUTH  
VALLEY DEVELOPERS**

**THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY  
ORDAINS AS FOLLOWS:**

**SECTION 1.** The City Council has adopted Resolution No. 4028 establishing a procedure for processing Development Agreements for projects receiving allotments through the Residential Development Control System, Title 18, Chapter 18.78 of the Municipal Code.

**SECTION 2.** The California Government Code Sections 65864 thru 65869.5 authorizes the City of Morgan Hill to enter into binding Development Agreements with persons having legal or equitable interests in real property for the development of such property.

**SECTION 3.** Pursuant to Chapter 18.78.380 of the Morgan Hill Municipal Code, 12 building allotments were awarded to application MP 01-11: Sunnyside-South Valley Developers for fiscal year 2003-2004; and

<u>Project</u>	<u>Total Dwelling Units</u>
MP 01-11: Sunnyside-South Valley Developers	12 building allotments

**SECTION 4.** References are hereby made to certain Agreements on file in the office of the City Clerk of the City of Morgan Hill. These documents to be signed by the City of Morgan Hill and the property owner set forth in detail and development schedule, the types of homes, and the specific restrictions on the development of the subject property. Said Agreement herein above referred to shall be binding on all future owners and developers as well as the present owners of the lands, and any substantial change can be made only after further public hearings before the Planning Commission and the City Council of this City.

**SECTION 5.** The City Council hereby finds that the development proposal and agreement approved by this ordinance is compatible with the goals, objectives, policies, and land uses designated by the General Plan of the City of Morgan Hill.

**SECTION 6.** Authority is hereby granted for the City Manager to execute all development agreements approved by the City Council during the Public Hearing Process.

**SECTION 7.** Severability. If any part of this Ordinance is held to be invalid or inapplicable to any

situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

**SECTION 8. Effective Date Publication.** This ordinance shall take effect from and after thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

The foregoing ordinance was introduced at the regular meeting of the City Council of the City of Morgan Hill held on the 16<sup>th</sup> Day of October 2002 and was finally adopted at a regular meeting of said Council on the <sup>nd</sup> Day of , 2002 and said ordinance was duly passed and adopted in accordance with law by the following vote:

**AYES: COUNCIL MEMBERS:**  
**NOES: COUNCIL MEMBERS:**  
**ABSENT: COUNCIL MEMBERS:**  
**ABSTAIN: COUNCIL MEMBERS:**

**ATTEST:**

**APPROVED:**

\_\_\_\_\_  
Irma Torrez, City Clerk

\_\_\_\_\_  
Dennis Kennedy, Mayor

🌀 **CERTIFICATE OF THE CITY CLERK** 🌀

**I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA,** do hereby certify that the foregoing is a true and correct copy of Ordinance No. 1585, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the <sup>nd</sup> Day of , 2002.

**WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.**

DATE: \_\_\_\_\_

\_\_\_\_\_  
**IRMA TORREZ, City Clerk**

## **EXHIBIT A**

### **RECORD AT NO FEE PURSUANT TO GOVERNMENT CODE SECTION 6103**

Recorded at the request of  
and when recorded mail to:

City of Morgan Hill  
Community Development Department  
17555 Peak Avenue  
Morgan Hill, CA 95037

### **RESIDENTIAL DEVELOPMENT AGREEMENT**

This Agreement entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2002, by and between South Valley Developers, under the Agreement, ("Property Owner") and the CITY OF MORGAN HILL, a municipal corporation organized and existing under the laws of the State of California (the "City").

### **RECITALS**

This Agreement predicated upon the following facts:

A. Government Code Sections 65864-65869.5 authorize the City of Morgan Hill to enter into binding development agreements with persons having legal or equitable interests in real property for the development of such property;

B. Under Section 65865, the City of Morgan Hill has adopted rules and regulations establishing procedures and requirements for consideration of Development Agreements;

C. The parties hereto desire to enter into a Development Agreement and proceedings have been taken in accordance with the City's rules and regulations;

D. The City of Morgan Hill has found that the Development Agreement is consistent with the General Plan and commitments made through the Residential Development Control System of the City of Morgan Hill (Title 18, Chapter 18.78 of the Municipal Code);

E. In light of the substantial commitments required to be made by Property Owner and in exchange for the consideration to be provided to the City by Property Owner as set forth herein, the City desires to give Property Owner assurance that Property Owner can proceed with the project subject to the existing official policies, rules and regulations for the term of this Development Agreement;

F. On \_\_\_\_\_, 2002, the City Council of the City of Morgan Hill adopted Ordinance No. \_\_\_\_\_, New Series approving the Development Agreement with the Property Owner, and the Ordinance thereafter took effect on \_\_\_\_\_, 2002.

**NOW, THEREFORE**, the parties agree:

1. Definitions. In this Agreement, unless the context otherwise requires:
  - (a) "City" is the City of Morgan Hill.
  - (b) "Project" is that portion of the development awarded building allotments as part of the Residential Development Control System by the City of Morgan Hill.
  - (c) "Property Owner" means the party having a legal or equitable interest in the real property as described in paragraph 3 below and includes the Property Owner's successor in interest.
  - (d) "Real Property" is the real property referred to in Paragraph 3 below.
2. Exhibits. The following documents are referred to in this Agreement, attached and made a part by this reference:

Exhibit "A"	-	Development Allotment Evaluation
Exhibit "B"	-	Development Review and Approval Schedule
Exhibit "C"	-	Legal Description of Real Property
- In the event there is any conflict between this Development Agreement and any of the Exhibits referred to above, this Development Agreement shall be controlling and superseding.
3. Description of Real Property. The real property which is subject to this Agreement is described in Exhibit "C".
4. Interest of Property Owner. Property Owner represents that he has a legal or equitable interest in the real property.
5. Assignment. The right of the Property Owner under this agreement may not be transferred or assigned unless the written consent of the City is first obtained which consent shall not be unreasonably withheld. The Property Owner shall provide the City with names, address, and phone numbers of the party to whom the property is to be transferred and Property Owner shall arrange an introductory meeting between the new owner, or his agent, and City Staff to facilitate consent of the City.
6. Recordation of Development Agreement. No later than ten (10) days after the City enters into this Agreement, the Clerk of the City shall record an executed copy of this Agreement in the Official Records of the County of Santa Clara. The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, successors in interest to the parties to this Agreement; provided, however, that this Agreement shall not be binding upon any consumer, purchaser, transferee, devisee, assignee or any other successor of Property Owner acquiring a completed residential unit comprising all or part of the Project.

7. Relationship of Parties. Property Owner and the City agree that each is not the agent of the other for purposes of this Agreement or the performance hereunder, and Property Owner is an independent contractor of the City.

8. City's Approval Proceedings for Project. On May 14, 2002 the City of Morgan Hill approved a development plan for the real property as part of its Residential Control System Review. This approval is described in proceedings designated File No. MP-01-11: Sunnyside-South Valley Developers, on file in the office of Community Development to which reference is made for further particulars. The development plan provides for the development of the property as follows:

Construction of 12 single family homes as approved by the City of Morgan Hill Planning Commission.

9. Changes in Project.

(a) No substantial change, modification, revision or alteration may be made in the approved development plan without review and approval by those agencies of the City approving the plan in the first instance, which approval shall not be unreasonably withheld. No minor changes may be made in the approved development plan without review and approval by the Director of Community Development of the City, or similar representation if the Director is absent or the position is terminated, which approval shall not be unreasonably withheld.

(b) Any change specified herein and approved by this Development Agreement shall be deemed to be an allowable and approved modification to the Development Plan.

(c) In the event an application to change, modify, revise or alter, the development plan is presented to the Director of Community Development or applicable agencies of the City for review and approval, the schedule provided in Exhibit "B" shall be extended for a reasonable period of time as agreed to by the parties hereto to accommodate the review and approval process for such application.

10. Time for Construction and Completion of Project.

(a) Securing Building Permits and Beginning Construction. Unless excused from performance as provided in paragraph 27 hereof, Property Owner agrees to secure building permits by (see Exhibit "B") and to begin construction of the Project in accordance with the time requirements set forth in the Uniform Building Code and the City's Residential Development Control System (see Exhibit "B") as these exist on the date of execution of this Agreement. In the event Property Owner fails to comply with the above permit issuance and beginning construction dates, and satisfactory progress towards completion of the project in accordance with the Residential Development Control System, the City, after holding a properly noticed hearing, may rescind all or part of the allotments awarded to the Property Owner and award said allotments to the next Residential Development Control System applicant who has qualified for such allotments.



(b) Progress Reports Until Construction of Project is Complete. Property Owner shall make reports to the progress of construction in such detail and at such time as the Community Development Director of the City of Morgan Hill reasonably requests.

(c) City of Morgan Hill to Receive Construction Contract Documents. If the City reasonably requests copies of off-site and landscaping contracts or documents for purpose of determining the amount of any bond to secure performance under said contracts, Property Owner agrees to furnish such documents to the City and the City agrees to maintain the confidentiality of such documents and not disclose the nature or extent of such documents to any person or entity in conformance with the requirements of the California Public Records Act.

(d) Certificate of Completion. Within thirty (30) days after completion to the City's satisfaction of 25% of the total number of units, the City shall provide Property Owners with an instrument in recordable form certifying completion of that portion of the project. Within thirty (30) days after completion to the City's satisfaction of 50% of the total number of units, the City shall provide Property Owners with an instrument in recordable form certifying completion of that portion of the project. Within thirty (30) days after completion to the City's satisfaction of 75% of the total number of units, and after all public and private improvements have been completed to the City's satisfaction, the City shall provide Property Owners with an instrument in recordable form certifying completion of that portion of the project. Within thirty (30) days after completion to the City's satisfaction of 100% of the total number of units, the City shall provide Property Owners with an instrument in recordable form certifying completion of the entire project. Upon issuance of the certificate of completion for 100% of the total units, this Development Agreement shall be deemed terminated as to the entire project.

11. Hold Harmless. Property Owner agrees to defend and hold the City and its officers, agents, employees and representatives harmless from liability for damage or claims for damage for personal injury including death or claims for property damage which may arise as a result of the construction of the project by the Property Owner or his contractor, subcontractor, agent, employee or other person acting within the course and scope of the authority of Property Owner.

Property Owner further agrees to hold the City and its officers, agents, employees, and representatives harmless from liability for damages or claims for damages suffered or alleged to have been suffered as a result of the preparation, supply, and/or approval of the plans and specifications for the project by the City or its officers, agents, employees or representatives.

Nothing herein shall require or obligate Property Owner to defend or hold the City and/or its officers, agents, employees and representatives harmless from or against any damages, claims, injuries, death or liability resulting from negligent or fraudulent acts of the City or its officers, agents, employees or representatives.

12. Insurance. Property Owner shall not commence actual construction under this Agreement until Property Owner has obtained insurance as described herein and received the approval of the City Attorney of Morgan Hill as to form and carrier, which approval shall not be unreasonably withheld. Property Owner agrees to maintain such insurance from a date beginning with the actual commencement of construction of the Project and ending with the termination of the Agreement as defined in Paragraph 20.

(a) Compensation Insurance. Property Owner shall maintain Worker's Compensation Insurance for all persons employed by Property Owner at the site of the Project, not including the contractor and or subcontractors on the site. Property Owner shall require each contractor and subcontractor similarly to provide Worker's Compensation Insurance for themselves and their respective employees. Property Owner agrees to indemnify the City for damage resulting from its failure to obtain and maintain such insurance and/or to require each contractor or subcontractor to provide such insurance as stated herein.

(b) Public Liability and Property Damage Insurance. Property Owner agrees to carry and maintain public liability insurance against claims for bodily injury, death or property damage to afford protection in the combined single limit of not less than One Million Dollars (\$1,000,000).

(c) Additional Insured. Property Owner shall obtain an additional insured endorsement to the Property Owner's public liability and property damage insurance policy naming the City, its elective and appointive boards, commissions, agents, and employees, as additional insured.

13. Cancellation of Insurance. On or before the commencement of actual construction of the Project, Property Owner shall furnish the City satisfactory evidence that the insurance carrier selected by the Property Owner and approved by the City will give the City of Morgan Hill at least ten (10) days prior written notice of cancellation or reduction in coverage of a policy.

14. Specific Restrictions on Development of Real Property. Notwithstanding the provisions of land use regulations otherwise applicable to the real property by virtue of its land use designation of Single Family Medium and zoning classification of R-1 7,000/RPD, the following specific conditions of the Residential Development Control System building allotment approval govern the use of the property and control over provisions in conflict with them, whether lots are developed by the Property Owner or by subsequent property owners:

(a) Permitted uses of the property are limited to the following:

The Tentative map, Grading Plans and Precise Residential Development Plans as approved by the City of Morgan Hill Planning Commission and Site and Architectural Review Process.

(b) Maximum density (intensity of use) is:

That shown on the Vesting Tentative map and Grading Plans and Precise Residential Development Plans as approved by the City of Morgan Hill Planning Commission and Site and Architectural Review Process.

(c) Maximum height for each proposed building is:

That height shown on the Architectural plans as approved by the City of Morgan Hill under Site and Architectural Review Process.

(d) Landscaping and recreational amenities, as shown on Site, Architectural, Landscape and Grading Plans as approved by the City of Morgan Hill Planning Commission and Site and Architectural Review Process.

(e) All public improvements shall be installed by the Property Owner along property frontages to the satisfaction of the Public Works Department consistent with the Site, Architectural, Landscape and Grading Plans as approved by the City of Morgan Hill Planning Commission and Site and Architectural Review Process.

(f) All architectural features and materials for all structures shall be constructed as shown on the Architectural plans as approved by the Site and Architectural Review Process.

(g) Property Owner agrees to any other reasonable condition of approval resulting from subdivision, site review and environmental review, which conditions are on file with the City.

(h) Property Owner agrees to include the following **safety** features in the development:

- (i) Provide fire escape ladders for upper floor bedrooms.
- (ii) Provide one mounted fire extinguisher (rated 2A10BC) for each 3,000 square foot of floor space.
- (iii) Provide outdoor lighting to meet all police department specifications.
- (iv) Install illuminated or self luminous address numbers for each unit and painted curb numbers where possible.
- (v) Use of noncombustible siding materials on at least fifty percent of the units within the project. The noncombustible siding must be used on at least fifty percent on an individual unit.
- (vi) Provide automatic earthquake shutoff valves for gas service.
- (vii) Installation of an intrusion and fire alarm system to be monitored by a central station, or to include auto dialer which meets city ordinance. Intrusion alarms to provide supervision of all doors and windows. Auto dialer and monitoring by a central station features are not required for alarm systems in apartment or condominium developments.

(i) Property Owner agrees to include the following **open space and landscape** improvements in Phase I of the development:

- (i) Open space buffer to be provided along Watsonville and the southerly 300 ft. of Sunnyside Ave.
- (ii) Park and open space to be maintained by a HOA
- (iii) Provide private pedestrian and bicycle path along the west side of the project that links to the future park area to the north.
- (iv) Applicant will provide and install 24-inch box size trees (City approved) with a minimum height of nine feet and spread fo three to four feet, at a ratio of one per ten site trees (excludes street trees).

- (v) Install varied front yard landscaping plans.
- (vi) Plant deciduous trees along the south facing side of home or buildings.
- (vii) Provide street trees (one per lot, two per corner lot), which shall be twenty-four inch box trees from the city approved list.
- (viii) Plant drought tolerant grasses for lawn areas. Lawn areas will not exceed 25 percent of landscape area (exclusive of parks).
- (ix) Provide automatic irrigation systems which will utilize separate valves and circuits for trees; shrubs and ground covers; and lawn areas. Minimum of three separate valves shall be provided.
- (x) Utilize a 6-station timer, with cycled watering to minimize run-off and increase water efficiency, as well as install drip irrigation.
- (xi) Install non-irrigated hardscape coverage on at least 15 percent of landscape area (does not include pedestrian walkways across circulation aisles).
- (xii) Utilize water conserving plants from City Selected Plant List.
- (xiii) Landscaping shall be installed on all areas visible from public and private rights-of-way.

(j) Property Owner agrees to include the following **housing types** in this phase of the development:

A minimum of one single story unit

(k) Property Owner agrees to include the following **affordable housing** features in the development:

- (i) One low income unit. The unit will have 3 bedrooms, 2 baths and be approximately 1,279 sq. ft.
- (ii) The Property Owner shall provide at least (1) unit for participation in a Below Market Rate (BMR) for sale program as a low income unit approved by the Community Development Department. The BMR unit(s) shall be approved by the City of Morgan Hill Planning Commission and Site and Architectural Review process. The BMR unit shall be under construction and the framing inspection passed prior to the framing inspection on the 10th market rate unit within Phase 1B.
- (iii) Below Market Rate (BMR) purchasers shall be treated in the same manner as purchasers of non-BMR units. Developer, including Developer's company, employees, and/or agents) agrees to assist BMR purchasers with all phases of the sales transaction, including, but not limited to, the preparation of any and all documents necessary to complete the sale and representation by a licensed real estate agent/broker.
- (iv) The Property Owner agrees to pay the standard housing mitigation fee.

- (v) Property Owner will provide the buyer(s) of the BMR unit(s) the same option to upgrade the materials in the BMR home as a market rate buyers would in the market rate homes.
- (vi) Property Owner will provide the same level of customer service to the BMR buyer as the market rate buyer.
- (vii) The Below Market Rate (BMR) Program Guidelines are hereby incorporated herein in full by this reference.
- (viii) Exterior trim entry door hardware, and finish to the same standard as the Market Rate.
- (ix) Minimum standards for equipment, fixtures, appliances and finishes have been established for the BMR units. All items installed shall be of good quality. Good quality shall be deemed as entry level but generally not the lowest level of product offered for that application. All products shall offer durability, reliability and maintain a quality appearance and function that is standard to most other median priced homes in the area. The below listed items must be installed as a basic feature of each BMR home. Minimum Interior standard finishes will be as follows:
  - Door hardware to be brass finish or the equivalent
  - Interior doors to be raised panel type or same as market rate
  - All closets shall have doors
  - Appliances shall be major brand name
  - Microwave hood shall be installed over stove
  - Kitchen counters shall be white ceramic tile
  - Kitchen cabinets shall be stained wood with white melamine interiors
  - Units will be roughed in for AC including electrical and line set.
  - Basic alarm system to secure all openings to the home
  - Carpet in bedrooms, hallways, family rooms
  - Linoleum or tile in entry, bathrooms kitchens
  - Laminate flooring may be substituted for carpet or linoleum
  - Electric garage door opener
  -

(l) Property Owner agrees to include the following **construction** features in the development:

- (i) Dry wall will be source separated and recycled;
- (ii) Cardboard containers and boxes are source separated and recycled.
- (iii) Buildings consume 15% less energy than allowed by California's Title 24 requirements which were in effect at the time of allotment. This will be accomplished by using the high efficiency furnaces, insulating hot water pipes, providing thermostatically controlled attic fans, exterior wall and attic insulation and points of demand hot water circulating system and high efficiency appliances.
- (iv) Heating systems with two separate zones will be used in minimum of 60% of the dwelling units.

- (v) Install a Laing SM-303 recirculating hot water system with demand pumping
  - (vi) Install Class A roof material.
  - (vii) Future ready wiring such as home running phone lines from all habitable rooms directly to main phone box rather than looping using RJ6 for television/video and CAT5R or equivalent for telephone lines.
  - (viii) Gas will be supplied to all dryer spaces plus 220 volt outlet.
  - (ix) Attic spaces have thermostatic controlled exhaust fans.
  - (x) Vertical drain lines between floors will be cast iron to reduce noise.
  - (xi) Uses porches, balconies, or multi-unit courtyards on at least 25% of units
  - (xii) At least two different roof lines and two different pitches will be used throughout the project.
  - (xiii) Project will use a variety of trim and base colors throughout the project.
  - (xiv) Project will use consistent detail on all sides.
  - (xv) All attic locations shall be designed to give the homeowner no less than 48" overhead.
  - (xvi) All bathroom, laundry room, and master bedroom walls shall be insulated.
  - (xvii) All sheet rock shall be fastened to the studs with Type (W) screws.
  - (xviii) Cast iron or sound insulating plumbing drops will be used at second floor plumbing.
  - (xix) Exterior shear wrap shall be used.
  - (xx) Windows shall be installed with a two-part process. First, install the standard 30lb felt and then install a thick layer of bituthane over the top of the windows so they will be leak proof. Lathing will then be pushed up under the bottom layer of the bituthane creating a water tight window.
- (m) The Property Owner agrees to provide the following **circulation** improvements:
- (i) Install walkways between Sunnyside Avenue and the end of each cul-de-sac.
  - (ii) Construct curvilinear streets and cul-de-sacs to discourage fast through traffic.
  - (iii) Eliminate dead end street at La Rocca Drive by providing a connection to Sunnyside Avenue on the north side of the project park.
  - (iv) Provide a minimum 20 feet clear view back-out distance between enclosed garage space and drive aisle.
  - (v) Access points shall provide adequate circulation for emergency response and police patrol.
  - (vi) Will install off-site pedestrian safety improvements at Paradise Elementary School including crosswalk, safety flashers or other items as needed by the District, or make an equivalent monetary donation of up to \$1000 per unit towards pedestrian safety improvement need by the District at a school the District's choice.
  - (vii) Will install pedestrian or traffic safety improvements at a school of the District's choice of up to \$2,000 per home. These improvements would include traffic safety improvements, sidewalks, pathways, bike paths or other safety devices as approved by the MHUSD, or propose to make an equivalent monetary donation of up to \$2,000 per unit for pedestrian safety improvements at an elementary school, high school or middle school of the District's choice.

- (viii) Will improve Sunnyside and Watsonville Road to the full street width including sidewalks, curb, gutter and paving.
  - (ix) Install full street improvement across project frontage (phase 1B) on Sunnyside Ave. Improvement shall include curb gutter, sidewalk, street lighting, under grounding of overheads, etc
  - (x) Underground existing overhead utilities and relocate existing utilities. Will fully improve the northeast intersection of Sunnyside/Watsonville Road. This would include paving and restriping per the city and county standards.
- (n) The Property Owner agrees to provide the following **public facilities** improvements:
- (i) Contribute \$1,000. Per unit to the off-site storm drain fund.
  - (ii) Contribute \$1,000. Per unit to the Capitol Improvement Program fund.
  - (iii) Storm drainage from the project will be accommodated through improvements to the city's master storm drain plan for the area and through onsite detention facilities which will provide area-wide flood relief. This will include improvements along the open space buffer area on Sunnyside and tie into the 60" RCP to Llagas Creek. This project will provide 0.35 acre feet of additional storage capacity and detention for the peak, Q100, year flow. This will provide flood routing for an upstream tributary of 186 acres and will handle 75 CFS of surface flow over Sunnyside Ave.
  - (iv) Provide storm routing and detention to prevent flooding area wide in the event of a 100 year flood. This will include a large buffer detention area along Sunnyside and significant improvements to the intersection of Santa Teresa and Watsonville Road.
- (o) The Property Owner agrees to provide the following **park and recreation** improvements:
- (i) Project will provide .85 acres of landscaped open space area within the south west corner of the project.
  - (ii) Project will pay double the required in lieu park fees.
  - (iii) Will improve and install bike lanes along the project frontage on Watsonville Road, a total distance of 858 linear feet of bike lane.
- (p) The Property Owner shall record constructive notice on the Final Parcel Map for the development that each lot is subject to the requirements of this Development Agreement, and that commitments under the Agreement which the City has permitted the Property Owner to delay must be fulfilled by the next subsequent property owners.
- (q) The Property Owner shall record constructive notice on the Final Parcel Map for the development that each lot is subject to the requirements of this Development Agreement, and that commitments under the Agreement which the City has permitted the Property Owner to delay must be fulfilled by the next subsequent property owners.

(r) The project shall provide the following information, by address for each unit, to the Community Development Department:

- (a) Date of sale
- (b) The number of bedrooms
- (c) The final sales price

This information shall be reported on an annual basis for the calendar year and is due to the City by March 30 of the following year for every year until the project is completed and all units are sold.

15. Effect of Agreement on Land Use Regulations.

(a) Unless otherwise provided herein or by the provisions of the Residential Development Control System, the rules, regulations and official policies governing permitted uses of the real property, governing density and governing the design, improvement and construction standards and specifications applicable to development of the real property are those rules, regulations and official policies, including without limitation building code requirements, in force at the time of the execution of this Agreement.

(b) This Agreement does not prevent the City, in subsequent actions applicable to the real property, from applying new rules, regulations and policies which do not conflict with those rules, regulations and policies applicable to the real property as set forth in Paragraph 14 and in effect at the time of the execution of this Agreement. Any rules, regulations or policies enacted by the City subsequent to the execution of this Agreement which are in conflict with those rules, regulations and policies in effect at the time of the execution of this Agreement or in conflict with the terms of this Agreement shall not be applied to the Project.

(c) The City shall be entitled to impose development fees in effect at the time a vested tentative map or other equivalent map is approved, rather than those in effect as of the date of this Agreement. The City shall be entitled to apply building standards in effect at the time the building permits are actually issued, rather than those in effect as of the date of this Agreement.

(d) This Agreement does not prevent the City from denying or conditionally approving any subsequent development project application on the basis of such existing or new rules, regulations and policies.

(e) Nothing contained herein will give Property Owner a vested right to develop the described Project or to obtain a sewer connection for said Project in the absence of sewer capacity available to the Project.

16. State or Federal Law. In the event that state or federal laws, or regulation, enacted after this Agreement have been entered into, prevent or preclude compliance with one or more provisions of this Agreement, such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such state or federal laws or regulations.



17. Periodic Review.

(a) The City shall review this Agreement at least at four times per year and on a schedule to assure compliance with the Residential Development Control System, at which time the Property Owner is required to demonstrate good faith compliance with the terms of this Agreement.

(b) If, as a result of such periodic review, the City finds and determines, on the basis of substantial evidence, that Property Owner has not complied in good faith with the terms or conditions of this Agreement, the City may rescind all or part of the allotments awarded to Property Owner and award said allotments to the next Residential Development Control System applicant who has qualified for such allotments.

18. Amendment or cancellation of Agreement. This Agreement may be amended, or canceled in whole or in part, by mutual consent of the parties and in the manner provided for in California Government Code Section 65868, 65867 and 65867.5.

19. Enforcement. Unless amended or canceled pursuant to Paragraph 18 hereof, this Agreement shall be enforceable by any party to it notwithstanding any change in any applicable general or specific plan, zoning, subdivision, or building regulation adopted by the City, which alters or amends the rules, regulations or policies specified in Paragraph 14 and 15.

20. Termination of Agreement. This Agreement shall terminate upon the occurrence of one or more of the following events or conditions:

(a) The City finds and determines, in accordance with the terms of Paragraph 17, that Property Owner has not reasonably complied in good faith with the terms of this Agreement and the City elects to terminate this Agreement;

(b) Property Owner gives the City written notice of its decision to terminate this Agreement;

(c) Property Owner and the City mutually consent to termination of this Agreement in accordance with the terms of Paragraph 18; or

(d) Issuance of the Certificate of Completion referred to in Paragraph 10(d), provided that this Agreement shall only terminate with respect to that part of the Project to which the Certificate of Completion applies.

21. Default by Property Owner. Property Owner shall be in default under this Agreement upon the occurrence of one or more of the following events or conditions:

(a) If a written warranty, representation or statement was made or furnished by Property Owner to the City with respect to this Agreement which was known or should have been known to be false in any material respect when it was initially made;

(b) A finding and determination by the City of Morgan Hill made following a periodic review under the procedure provided for in Government Code Section 65856.1 that upon the basis of substantial evidence, the Property Owner has not complied in good faith with one or more of the material terms or conditions of this Agreement.

22. Default by the City of Morgan Hill. The City is in default under this Agreement upon the occurrence of one or more of the following events or conditions:

(a) The City, or its boards, commissions, agencies, agents or employees, unreasonably fails or refuses to take action on proposals, applications or submittal presented by the Property Owner within a reasonable time after receipt of such proposals, applications or submittal.

(b) The City unreasonably fails or refuses to perform any obligation owed by it under this Agreement.

(c) The City imposes upon Property Owner rules, regulations or official policies governing permitted uses, density, maximum height and size of proposed structures and reservations (dedications) of land for public purposes of the Property or the design, improvement and construction standards and specifications applicable to the development of the Property, which are not the same in all material respects as those rules, regulations and official policies in effect at the time of the execution of this Development Agreement and which adversely and materially affect the Project.

23. Cure of Default.

(a) This section shall govern cure of defaults except to the extent to which it may be in conflict with the Residential Development Control System. Upon the occurrence of an event of default by either party, the party not in default (the "non-defaulting party") shall give the party in default (the "defaulting party") written notice of the default. The defaulting party shall have thirty (30) calendar days from the date of notice (subject to subsection (b) below) to cure the default if such default is curable within thirty (30) days. If such default is so cured, then the parties need not take any further action except that the defaulting party may require the non-defaulting party to give written notice that the default has been adequately cured.

(b) Should the default not be cured within thirty (30) calendar days from the date of notice, or should the default be of a nature which cannot be reasonably cured within such thirty (30) day period and the defaulting party has failed to commence within said thirty (30) day period and thereafter diligently prosecute the cure, the non-defaulting party may then take any legal or equitable action to enforce its rights under this Development Agreement.

24. Remedies.

(a) In the event Property Owner defaults under the terms of this Agreement, the City, after holding a properly noticed hearing may rescind all or part of the allotments awarded to Property Owner and award said allotments to the next Residential Development Control System applicant who has qualified for such allotments or may terminate or modify this Development Agreement.

(b) In the event the City defaults under the terms of this Agreement, in no event shall the Property Owner be entitled to any of the following:

- (i) Punitive damages;
- (ii) Damages for lost profits;
- (iii) Damages for expenditures or costs incurred to the date of this Agreement.

(c) The parties hereby explicitly acknowledge and agree that remedies for any issue or dispute arising out of the performance or non-performance of this Agreement are limited to those provided under actions for mandamus, declaratory relief and/or specific performance. The parties further agree that in no event shall any party shall maintain any action, claim or prayer for damages pursuant to any alleged federal or state constitutional or statutory claim, or incurred as a result of an alleged breach of this Agreement.

25. Attorneys Fees and Costs. If legal action by either party is brought because of breach of this Agreement or to enforce a provision of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and court costs.

26. Notices. All notices required or provided for under this Agreement shall be in writing and delivered in person or sent by certified mail, postage prepaid addressed as follows:

City of Morgan Hill: Community Development Department  
City of Morgan Hill  
17555 Peak Avenue  
Morgan Hill, CA 95037

With a copy to: City Clerk  
City of Morgan Hill  
17555 Peak Avenue  
Morgan Hill, CA 95037

Property Owner: South Valley Developers  
Attn: Scott Schilling  
16060 Caputo Dr., #160  
Morgan Hill, CA 95037

A party may change the address shown above by giving notice in writing to the other party and thereafter notices shall be addressed and transmitted to the new address.

27. Force Majeure. Either party hereto, acting in good faith, shall be excused from performing any obligations or undertakings provided in this Agreement in the event and for so long as the performance of any such obligation is prevented, delayed, retarded or hindered by an act of God, fire, earthquake, floods, explosion, actions of the elements, war, invasion, insurrection, riot, mob violence, strikes, lockouts, eminent domain, inability to obtain labor or materials or reasonable substitutes therefor, non City governmental restrictions, regulations or controls, including revisions to capacity ratings of the wastewater plant by the Regional Water Quality Control Board, the State Water Resources Board, or any court action or judicial orders; unreasonable delays in processing applications or obtaining approvals, consent or permits, filing of legal actions, or any other cause, not within the reasonable control of such party. Active negligence of either party, its officers, employees or agents shall not excuse performance.

28. Rules of Construction and Miscellaneous Terms.

- (a) The singular includes the plural; the masculine gender includes the feminine; "shall" is mandatory; "may" is permissive.
- (b) If a part of this Agreement is held to be invalid, the remainder of the Agreement is not affected.
- (c) This writing contains in full, the final and exclusive Agreement between the parties.
- (d) The time limits set forth in this Agreement may be extended by mutual consent of the parties.

**IN WITNESS WHEREOF**, this Agreement has been executed by the parties hereto on the day and year first above written.

**APPROVED AS TO FORM:**

**CITY OF MORGAN HILL**

\_\_\_\_\_  
**HELENE LEICHTER, City Attorney**

\_\_\_\_\_  
**J. EDWARD TEWES, City Manager**

Attest:

\_\_\_\_\_  
**IRMA TORREZ, City Clerk**

**PROPERTY OWNER(S)**

\_\_\_\_\_  
  
\_\_\_\_\_

**(ALL SIGNATURES, EXCEPT CITY CLERK AND CITY ATTORNEY,  
MUST BE ACKNOWLEDGED BY A NOTARY)**

**EXHIBIT "A"**

**DEVELOPMENT ALLOTMENT EVALUATION**

**MP-01-11: Sunnyside-South Valley Developers**

(See Entire Documents on File in the  
Community Development Department - City Hall)  
CITY OF MORGAN HILL

**EXHIBIT "B"**

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**FY 2003-2004 DEVELOPMENT SCHEDULE (12 allotments)**  
**MP-01-11: Sunnyside-South Valley Developers**

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**I. SUBDIVISION AND ZONING APPLICATIONS**

Applications Filed: (7-22-02)

**II. SITE REVIEW APPLICATION**

Application Filed: (9-2-02)

**III. FINAL MAP SUBMITTAL**

Map, Improvements Agreement and Bonds: (2-2-03)

**IV. BUILDING PERMIT SUBMITTAL**

Submit plans to Building Division for plan check: (7-01-03)

**V. BUILDING PERMITS**

Obtain Building Permits (3-31-04)

Commence Construction: (6-30-04)

Failure to obtain building permits and commence construction by the dates listed above, shall result in the loss of building allocations. Submitting a Final Map Application or a Building Permit six (6) or more months beyond the filing dates listed above shall result in the applicant being charged a processing fee equal to double the building permit plan check fee and/or double the map checking fee to recoup the additional costs incurred in processing the applications within the required time limits. Additionally, failure to meet the Final Map Submittal and Building Permit Submittal deadlines listed above may result in loss of building allocations. In such event, the property owner must re-apply under the development allotment process outlined in Section 18.78.090 of the Municipal Code if development is still desired.

An exception to the loss of allocation may be granted by the City Council if the cause for the lack of commencement was the City's failure to grant a building permit for the project due to an emergency situation as defined in Section 18.78.140 or extended delays in environmental reviews, permit delays not the result of developer inactions, or allocation appeals processing.

If a portion of the project has been completed (physical commencement on at least 6 dwelling units and lot improvements have been installed according to the plans and specifications), the property owner may submit an application for reallocation of allotments. Distribution of new building allocations for partially completed project shall be subject to the policies and procedures in place at the time the reallocation is requested.

**EXHIBIT "C"**

**LEGAL DESCRIPTION**

**MP-01-11: Sunnyside-South Valley Developers:**

The land referred to herein is situated in the State of California, County of Santa Clara, City of Morgan Hill and is described as follows:

ALL OF LOT 1, as shown upon that certain Map entitled, "BARRETT AND MARK SUBDIVISION OF THE GRANT OAK RANCH," which Map was filed for record in the office of the Recorder of the County of Santa Clara, State of California, on July 12, 1906 in Book L of Maps, at pages(s) 42.

Assessor's Parcel No: 767-29-006



## ***CITY COUNCIL STAFF REPORT***

***MEETING DATE: October 16, 2002***

**General Plan Amendment Application, GPA 02-02: Watsonville-City of Morgan Hill RDA & Zoning Amendment Application ZA-02-06: Watsonville-City of Morgan Hill RDA**

**RECOMMENDED ACTION(S):**

1. Open/Close Public Hearing
2. Approve Mitigated Negative Declaration
3. Adopt Resolution Approving General Plan Amendment
4. Adopt Ordinance Approving Zoning Amendment

**EXECUTIVE SUMMARY:** This is a request to amend the General Plan land use designation from Public Facilities to Multi-Family Low and amend the zoning designation from Public Facilities to R2-3,500 to maintain consistency with the proposed General Plan designation. The site is a 1.55 acre parcel on the northside of Watsonville Rd., 800 ft. west of the Monterey Rd. and Watsonville Rd. intersection. The Morgan Hill Redevelopment Agency (RDA) bought the site for use as a future fire station. The Santa Clara County Fire Department recently completed a study and determined the site was no longer appropriate for a fire station. County Fire is looking for an alternative site for a new fire station more centrally located in the community. The RDA is looking at developing the site as affordable housing for teachers, police officers, and other public employees. The site currently abuts the 24-unit Rio Sereno multi-family housing project to the north and west.

The proposed amendment to the General Plan would encompass the entire 1.55 acre of the parcel. The proposed amendment would be consistent with the General Plan land use designation in the area. On three sides of the site, the General Plan designation is Multi-Family Low.

Goal 7 of the City's Land Use Element states the City should provide a variety of housing types and densities available to all residents. Approving the amendment to the General Plan would meet the City's 7d policy, encouraging higher residential densities at locations where convenient access and adequate infrastructure is readily available and policy 7p providing housing at a range of costs that meet the needs of all sectors of the workforce. The multi-family designation will be consistent and compatible with development on Watsonville Rd.

The requested R2-3,500 zoning designation is consistent with the proposed General Plan designation for the parcel, and consistent with the adjacent multi-family development. The proposed zoning amendment would also be consistent with the zoning on adjacent properties.

On September 24, 2002, the Planning Commission considered General Plan Amendment and Zoning Amendment request and voted (6-0) recommending Council approval. A copy of the Commission staff report and minutes are attached for the Council's reference.

**FISCAL IMPACT:** None. Filing fees were paid to the City to cover the cost of processing this application.

**Agenda Item # 30**

**Prepared By:**

**Assistant Planner**

**Approved By:**

**Community  
Development Director**

**Submitted By:**

**City Manager**



## **RESOLUTION NO. 5617**

### **A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING GENERAL PLAN AMENDMENT GPA 02-02: WATSONVILLE-CITY OF MORGAN HILL RDA CHANGING THE LAND USE DESIGNATION FROM PUBLIC FACILITIES TO MULTI-FAMILY LOW ON A 1.55 ACRE SITE. (APN 767-23-017)**

**WHEREAS**, the City Council of the City of Morgan Hill at their regular meeting of October 16, 2002, considered General Plan Amendment, GPA 02-02: Watsonville-City of Morgan Hill, a request to amend the designation on a 1.55 acre site, from Public Facilities to Multi-Family Low; and

**WHEREAS**, the City Council received and considered testimony at a duly noticed public hearing; and

**NOW, THEREFORE, THE MORGAN HILL CITY COUNCIL HEREBY RESOLVES AS FOLLOWS:**

**SECTION 1.** The General Plan amendment is consistent with the provisions of the General Plan.

**SECTION 2.** An environmental initial study has been prepared for the proposed General Plan amendment. A Mitigated Negative Declaration will be filed.

**SECTION 3.** The City Council hereby approves a General Plan Amendment allowing for a land use designation change from Public Facilities to Multi-Family Low on a 1.55 acre site as shown in attached Exhibit "B".

**PASSED AND ADOPTED** by the City Council of Morgan Hill at a Regular Meeting held on the 16<sup>th</sup> Day of October, 2002 by the following vote.

**AYES:**            **COUNCIL MEMBERS:**  
**NOES:**          **COUNCIL MEMBERS:**  
**ABSTAIN:**      **COUNCIL MEMBERS:**  
**ABSENT:**       **COUNCIL MEMBERS:**

### **🍷 CERTIFICATION 🍷**

**I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA**, do hereby certify that the foregoing is a true and correct copy of Resolution No. 5617, adopted by the City Council at the Regular Meeting on October 16, 2002.

**WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.**

**DATE:** \_\_\_\_\_

\_\_\_\_\_  
**IRMA TORREZ, City Clerk**

**ORDINANCE NO. 1586, N.S.**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL RECOMMENDING APPROVAL OF ZONING AMENDMENT ZA-02-06 WATSONVILLE-CITY OF MORGAN HILL RDA CHANGING THE ZONING DESIGNATION FROM PUBLIC FACILITIES TO R2-3,500 ON A 1.55 ACRE SITE. (APN 767-23-017)**

**THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAINS AS FOLLOWS:**

**SECTION 1.** Re-zone 1.55 acres of land, which fronts onto Watsonville Rd.

**SECTION 2. INCORPORATING THE MAP BY REFERENCE.** There hereby is attached hereto and made a part of this ordinance, a zoning map entitled “Exhibit A” Map Showing Lands of Morgan Hill Redevelopment Agency of Ordinance No. \_\_\_\_\_, New Series, which gives the boundaries of the described parcels of Land.

**SECTION 3. DESCRIPTION OF LAND IN ZONING.** There hereby is attached hereto and made a part of this ordinance a legal description entitled “Exhibit B” which gives the boundaries of the described parcels of Land.

**SECTION 4. FINDING OF CONSISTENCY WITH THE GENERAL PLAN.** The City Council hereby finds that the amendments established by this ordinance as herein described are compatible with the goals, objectives, policies and land use designation of the General Plan of the City of Morgan Hill. The Council further finds that the proposed amendments are required in order to serve the public health, convenience and general welfare as provided by Section 18.62.010 of the Morgan Hill Municipal Code.

**SECTION 5.** An environmental initial study has been prepared for this application and has been found complete, correct and in substantial compliance with the requirements of California Environmental Quality Act. A Mitigated Negative Declaration will be filed.

**SECTION 6.** Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

**SECTION 7.** Effective Date; Publication. This Ordinance shall take effect from and after thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

The foregoing ordinance was introduced at the regular meeting of the City Council of the City of Morgan Hill held on the 16<sup>th</sup> Day of October 2002 and was finally adopted at a regular meeting of said Council on the <sup>nd</sup> Day of , 2002 and said ordinance was duly passed and adopted in accordance with law by the following vote:

**AYES: COUNCIL MEMBERS:**  
**NOES: COUNCIL MEMBERS:**  
**ABSENT: COUNCIL MEMBERS:**  
**ABSTAIN: COUNCIL MEMBERS:**

**ATTEST:**

**APPROVED:**

\_\_\_\_\_  
**Irma Torrez, City Clerk**

\_\_\_\_\_  
**Dennis Kennedy, Mayor**

**🏛 CERTIFICATE OF THE CITY CLERK 🏛**

**I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA,** do hereby certify that the foregoing is a true and correct copy of Ordinance No. 1585, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the <sup>nd</sup> Day of , 2002.

**WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.**

DATE:\_\_\_\_\_

\_\_\_\_\_  
**IRMA TORREZ, City Clerk**



## ***CITY COUNCIL STAFF REPORT***

***MEETING DATE: October 16, 2002***

### **OSR-02-02: MANZANITA-MCLAREN**

#### **RECOMMENDED ACTION(S):**

1. Open/close Public Hearing
2. Adopt attached resolution of approval forwarding the request to LAFCO..

**EXECUTIVE SUMMARY:** A homeowner in Holiday Lakes Estates is requesting an Out of Urban Service Area request for a sewer connection for an existing 702 sq. ft. home on a .39 acre parcel located at 17645 Manzanita Dr. The home is outside the City Limits and Urban Service Boundary.

The home is currently being served by City water but not City sewer service. The septic system that supports the structure has failed and the County Health Department has recommended that the home be connected to a sewer system (see an attached letter from County of Santa Clara). Due to the soil type, lack of land area for a new septic system, and the topography of the property, the installation of a new system is not possible. An inspection report from a septic service company is attached. Attached is a map of the property showing the location of existing structures, proposed garage and proposed sewer line. Also attached is a photo of the site, showing seepage from the failed septic tank.

Section 18.78.080 B, of the Municipal Code reads as follows: “The City shall grant no new extensions of urban services for residences beyond its urban service area except in the event that: B. An owner of an existing development requests an extension due to the failure of an existing septic system or well and the city council makes a finding that denial of services to that development would have a direct adverse impact on the public health and safety.”

The absence of proper sewage disposal is a public health concern. Connection to City sewer appears to be the only viable option at this time since the parcel cannot accommodate a new septic system and the existing one cannot be repaired. A City sewer line already exists at the rear of the property. The extension of sewer service to this property would involve the installation of an on-site lateral. Staff recommends approval of the request since the finding of a direct adverse impact on the public health and safety can be made. The attached Council resolution will be forwarded to LAFCO for consideration.

**FISCAL IMPACT:** None. Filing fees were paid to the City to cover the cost of processing this application.

**Agenda Item # 31**

**Prepared By:**

**Assistant Planner**

**Approved By:**

**Community  
Development Director**

**Submitted By:**

**City Manager**

## **RESOLUTION NO. 5618**

### **A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN EXTENSION OF CITY SEWER SERVICE TO AN UNINCORPORATED PROPERTY LOCATED AT 17645 MANZANITA DR. (APN 729-39-026)**

**WHEREAS**, the Santa Clara County Department of Environmental Health has determined that the septic system has failed. Due to the limited area available for repair, the County has recommended connecting to a sanitary sewer to resolve the eminent nuisance and unsafe condition created by the failed septic system.

**WHEREAS**, the City Council finds that the present septic system cannot be replaced or repaired. In the best interest of the public health and safety and the hardship imposed on the property owner, a connection to the City sewer is recommended; and

**WHEREAS**, the existing residential use is consistent with the County zoning and City General plan and the use without proper sewage disposal has an adverse effect on the public's health and safety; and

**WHEREAS**, no other options are available for providing sewage disposal for the property; and

**WHEREAS**, testimony received at a duly-noticed public hearing, along with exhibits and drawings and other materials have been considered in the review process.

**WHEREAS**, such request was considered by the City Council at their regular meeting of October 16, 2002, at which time the City Council approved the Out of Urban Service Area Request, OSR-02-02: Manzanita-McLaren.

**NOW, THEREFORE, THE MORGAN HILL CITY COUNCIL DOES RESOLVE AS FOLLOWS:**

**SECTION 1.** Based on a determination of the County Department of Environmental Health in a letter dated August 28, 2002, the City Council finds that the subject property cannot be provided with septic service due to parcel size, soil type, and topography of the parcel. Denial of services would have a direct adverse impact on the public health and the property owner.

**SECTION 2.** The City sewer line currently exists at the rear of the property and would not need to be extended to service the subject property. An on-site hook up to the existing line would be necessary and is consistent with the General Plan policies and Urban Service Extension policy and Morgan Hill Municipal Code section 18.78.080.

**PASSED AND ADOPTED** by the City Council of Morgan Hill at a Regular Meeting held on the 16<sup>th</sup> Day of October, 2002 by the following vote.

**AYES: COUNCIL MEMBERS:**  
**NOES: COUNCIL MEMBERS:**  
**ABSTAIN: COUNCIL MEMBERS:**  
**ABSENT: COUNCIL MEMBERS:**

**🍷 CERTIFICATION 🍷**

**I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA**, do hereby certify that the foregoing is a true and correct copy of Resolution No. 5618, adopted by the City Council at the Regular Meeting on October 16, 2002.

**WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.**

**DATE:** \_\_\_\_\_

\_\_\_\_\_  
**IRMA TORREZ, City Clerk**



## ***CITY COUNCIL STAFF REPORT***

***MEETING DATE: October 16, 2002***

**Agenda Item # 32**

**Prepared By:**

**City Manager**

### **STATUS REPORT ON MEDICAL SERVICES**

**RECOMMENDED ACTION(S):** Information Only

**EXECUTIVE SUMMARY:** On September 25, 2002, the City Council requested an update on medical services in the light of reports that San Jose Medical Group (SJMG) might close its facility on Juan Hernandez Drive in Morgan Hill. Earlier, SJMG had announced cutbacks in the extended hours of their primary care physicians who had provided “urgent care” services.

This clearly bad news was slightly offset by the recent reopening of the medical office building at the former Saint Louise site in Morgan Hill, and by continuing efforts to recruit primary care physicians to the community.

San Jose Medical Group is working to establish a transition plan for any patients that might be impacted by closure of the facility. There is an effort to negotiate arrangements with another medical group which includes some doctors with offices in the South County region.

Other efforts to improve medical services are outlined in the attached summary prepared by the Morgan Hill Community Health Foundation.

Next month the Foundation will provide a more complete report and recommended long term strategy.

**FISCAL IMPACT:** N/A



## ***CITY COUNCIL STAFF REPORT***

***MEETING DATE: October 16, 2002***

### **NOTICE OF PREPARATION FOR THE PROPOSED SANTA CLARA COUNTY COURT FACILITIES**

#### **RECOMMENDED ACTION(S):**

1. Provide comment on the environmental issues that would need to be addressed in the Draft EIR.
2. Direct Staff to forward City comments on the Notice of Preparation to the County of Santa Clara GSA.

#### **EXECUTIVE SUMMARY:**

The County of Santa Clara is proposing to construct a new County Court facility in Morgan Hill at the intersection of Butterfield Boulevard and Diana Avenue. The project will require preparation of an Environmental Impact Report (EIR). Attached is a copy of the Notice of Preparation (NOP) being circulated for the EIR. The purpose of the Notice is to solicit comments regarding the scope and content of the EIR that are relative to the City's concerns and statutory responsibilities. The topics to be evaluated in the EIR are listed on page 3 of the attached Notice of Preparation.

The Planning Commission reviewed the NOP at their October 8<sup>th</sup> meeting. In addition to the staff comments contained in the attached October 8<sup>th</sup> memorandum, the Commission recommends the project description and analysis include either the new police station, a third fire station or both facilities on a portion of the 8-acre project site. The Commission also felt that the EIR should include a project level impact analysis of these facilities. This would delay the preparation of the EIR while the City prepares preliminary plans for the new police and/or fire facilities. Staff is requesting direction from the City Council on whether a project level impact analysis for the police/fire facilities is required at this time. If the EIR proceeds without a project level analysis, it may be necessary to supplement the County's EIR with additional studies prior to approval of plans for the police/fire facilities. Staff is also requesting Council input on other environmental issues that would need to be addressed in the Draft EIR.

**FISCAL IMPACT:** None.

**Agenda Item # 33**

**Prepared By:**

**Planning Manager**

**Submitted By:**

**City Manager**





## ***CITY COUNCIL STAFF REPORT***

***MEETING DATE: OCTOBER 16, 2002***

### **ANALYSIS FOR ALLOWING LARGE GROUP ASSEMBLY FACILITIES IN UNINCORPORATED AREAS OF SANTA CLARA COUNTY**

#### **RECOMMENDED ACTION(S):**

Direct Staff to forward city comments on the subject report to the County Board of Supervisor's Housing, Land Use, Environment, and Transportation Committee.

**Agenda Item # 34**

**Prepared By:**

**Planning Manager**

**Submitted By:**

**City Manager**

#### **EXECUTIVE SUMMARY:**

The Santa Clara County Planning Office has received a number of inquiries concerning the development of large private schools, churches, and other kinds of urban scale, large group assembly facilities (LGAF's) in the rural unincorporated areas. In response to these requests, the County Board of Supervisors asked the County Planning Office to prepare the attached report providing background information and policy options that would enable the Board to weigh the potential advantages and disadvantages of changing County policies to allow development of urban scale large group assembly facilities in the rural unincorporated areas of the County. The areas under consideration for such facilities would include the unincorporated area around Morgan Hill. The County Planning Office is requesting that the City provide comment on the attached report. A public hearing is scheduled before the Board of Supervisor's Housing, Land Use, Environment, and Transportation Committee on Thursday, October 24, 2002.

#### **Staff and Planning Commission Comments:**

The attached memorandum outlines the staff and Planning Commission comments on the County Planning Office Report. Both Staff and Commission agree that rather than opening the door to urban development in the unincorporated areas, the County should encourage the cities to increase their efforts to accommodate large group assembly facilities in the cities' incorporated areas. Morgan Hill could address this issue as part of our upcoming Greenbelt Study. Staff could examine the feasibility of accommodating large group assembly facilities within future urban areas of the City that will be outside of the Greenbelt.

The staff memorandum also comments on the analysis provided by the County Planning Office as to the pros and cons of changing County policies. The analysis does a good job of addressing the issue and provides a compelling argument that this type large scale urban use should not be allowed in the rural areas. However, as we have noted in the City's report, further analysis is required to address the full impacts of allowing LGAF's in the rural unincorporated areas.

**FISCAL IMPACT:** None.